



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
RICHARD A. LEOPOLD, DIRECTOR

**MINUTES
OF THE
NATURAL RESOURCE COMMISSION
MEETING**

FEBRUARY 12, 2009

**IOWA DEPARTMENT OF NATURAL RESOURCES
Henry Wallace Building
502 E. 9th Street
Des Moines, IA 50319**

Call to Order

The meeting of the Natural Resource Commission was called to order by the Chair, Commissioner Bill Bird, at 8:30 a.m. on February 12, 2009.

Commissioner Bird welcomed the public to the meeting and reviewed the public speaking forum guidelines. He also thanked DNR staff for the informative presentations from the prior day; Lichens at Ledges State Park presented by John Pearson, and Honey Creek Resort State Park financial/facility update presented by the operating company Central Group.

Members Present

William Bird
Gregory Drees
Richard (Kim) Francisco
Elizabeth Garst
Tammi Kircher
Carol Kramer
Janelle Rettig

Members Absent

None

1. Approve Agenda

Moved – Commissioner Francisco
Seconded - Commissioner Kramer
Motion – Carried by Unanimous Vote

2. Approve Minutes of 01/08/2009

Moved – Commissioner Kircher
Seconded - Commissioner Drees
Motion – Carried by Unanimous Vote

3. Director's Remarks

Director Richard Leopold gave the following update:

- **Budget** – The Director has been working a lot on the budget. There was an across the board budget cut of 1.5% in December cumulative with a later additional 6.5% budget cut, freeze on travel and hiring, so as a whole that meant an approximate 8.5% budget cut for the DNR of general fund monies.
- **Bonding Bill** – The Governor has proposed the creation of the Rebuild Iowa Infrastructure Authority. This Authority would issue \$700 million in bonds, paid with existing gaming revenue and assist many DNR programs for years to come.
- **Federal Stimulus** – Staff has been working for months alongside the Governor's staff on the proposed stimulus package and it is now close to being completed. They are still reviewing impacts, but thus far happy with the progress. The Director noted that it is difficult to be "shovel ready" and to have unfunded engineered plans on the table. It is

not feasible to wait weeks or months to draft plans. The most prominent DNR program that already has plans in place is the State Revolving Fund programs. The Director noted that Patti Cale-Finnegan has done amazing work with the state's drinking and clean water revolving funds programs. It is most likely that the DNR will receive \$80 million dollars infused into these funds. Currently there is approximately \$100 million dollars annually of infrastructure work with waste water and other programs. This additional funding will benefit not only the program itself, but the entire state as it will impact the economy, jobs, etc. Other items of the stimulus package that are still being worked on are Medicaid/Medicare money which will make DNR money "fungible".

- **Dove Bill** – Senator Dick Dearden is the chair of the Natural Resources Committee in the Senate. It is anticipated that we will see the Dove Bill coming back. There is a lot of controversy surrounding this bill. The DNR is remaining neutral and only providing scientific/biological background information so the committee may make their decision.
- **Hunting & Fishing License Fees** – The decision to postpone the request to increase hunting & fishing license fees was not an easy decision to make, however due to the current economic state it was the right thing to do. The increase had already been scheduled for the current fiscal year or next years at the latest; and was not tied to the flooding of 2008. Because of the decision to withdraw the license fee increase request the Governor has promised a \$6 million dollar supplemental package through this legislature to help backfill the losses in state parks (\$2M), Fish & Wildlife Trust Fund (\$4M). This will be the first time in history that General Fund money will be placed in the Fish & Wildlife Trust Fund to help pay for the Wildlife, Fisheries, and Law Enforcement bureaus. It is thought that next year the proposed license fee increase may be more feasible.
- **Sustainable Funding** – Is looking good and building momentum. It has passed out of legislative committees, the house, and the senate but needs to get to the floor. There have been over twenty organizations working to get sustainable funding passed this legislative session and on the voting ballot by 2010.
- **SANR** – States Alliance for Natural Resources is a group the Director has been involved with, the main focus being renewable energy, carbon sequestration potential on state lands.
- **Washington Trip** – The Director will be in Washington, DC next week working with a group affiliated with the National Wildlife Federation, Wildlife Institute, and Association of Fish & Wildlife Agencies. This will be a collaboration of Natural Resource Leaders and Academia from across the country to work on federal policies on climate change litigation programs, etc. While in Washington, DC the Director also plans to meet with Iowa's Congressional Delegates; and hopes to get in to see U.S. Secretary of Agriculture Tom Vilsack or at least some of his staff members to discuss farm bill conservation compliance and reduction tax credits for wind.
- **Marshalltown, IA Coal Plant Proposal** – On Monday, February 17th the DNR will announce that the draft air quality construction permits and open public comment period. 2/26/2009 - posted: <http://www.iowadnr.gov/air/news/articles/09feb17.html>

Questions/Discussion:

- Commissioner Garst stated she would like to see at a future meeting a report on dove science.
- Commissioner Francisco noted that he understood from a newspaper article that the department had agreed to look at additional ways to increase license sales. He feels that

dove hunting may help to increase license. Director Leopold reminded the commission that if the Dove Bill passes that it would not set a dove season but only give the right to the DNR to propose to the commission to set a dove season.

- Commissioner Rettig asked for clarification on the state's economic stimulus \$700M. As she understood the proposal it would take department monies from infrastructure and move to the proposed bond. Director Leopold confirmed that was correct. Commissioner Rettig questioned what would happen after year one. Would there be new monies placed in the \$700M for the Environment and Natural Resources other than the \$4M going into the Fish & Wildlife Trust Fund? In year two and beyond would the monies go back under infrastructure and it then be short \$50M? Director Leopold stated that his understanding would be that \$50M would be converted annually into the bond package to create to the \$700M but would not all be spent in the first year. The Department of Management has said that this \$700M bond package would secure the DNR funding three to four years into the future. New money had not been discussed yet, the Director believes the potential exists. There have been discussions about possibly placing more funding into the lakes restoration programs to accelerate it due to the fact that it is doing such a great job currently. The Director would also like to see the river basin program included as it fits well with the lakes restoration program.
- Commissioner Rettig made a statement that she believes that the department needs a stimulus package to build/develop more wetlands.
- Commissioner Rettig stated that the Governor had proposed selling the state farm for prisons in the Burlington area, but she questions if this may be an opportunity to develop wind or solar energy for revenue generation. She is curious to know if there have been any discussions surrounding such plans. Director Leopold does not support the sale of state land, and agreed that government should investigate the possibility of wind and solar energy on state land to generate revenue and he would welcome a study on this issue.

Public Participation

- Merwin Briggs – Waverly, IA – Spoke about deer depredation program.
- Richard Bishop – Indianola, IA –Kiwanis Club, Presented a donation check for \$10,000 dollars for a walkway trail at Banner Lake in Indianola, IA.

4. Construction Updates

4.1 Dolliver State Park, Webster County – Flood Damage Repairs

Bids were opened January 15, 2009, for the following project:

This project consists of the replacement of three trail bridges, repair of a stone CCC era dam and retaining wall and incidental work as required by the Plans and the DNR Construction Inspector. This project replaces three trail bridges that were washed away in 2008 and the repair of an existing CCC era dam and retaining wall.

Project was designed by Ken Jackson and will be inspected by Richard Wilson, District Inspector. DNR estimate is \$175,000. Funding will be provided by FEMA and REAP Land Management Minors (Capital Link #153). 20 sets of plans were issued. 11 bids were received.

Engineering Consultants, Inc.	Cedar Rapids, IA	\$162,305.00
Richards Construction Co. Inc.	Sac City, IA	\$180,803.60
IROC Builders	Fort Madison, IA	\$199,356.24
Jasper Construction Services Inc.	Newton, IA	\$209,800.00
Murphy Heavy Contracting, Inc.	Anita, IA	\$215,670.00
Minnowa Construction, Inc.	Harmony, MN	\$217,000.00
Keller Excavating	Boone, IA	\$241,700.00
Smith-Gehrle, Inc.	Iowa Falls, IA	\$242,000.00
C.L. Carroll Company, Inc.	Des Moines, IA	\$246,310.00
United Contractors, Inc.	Johnston, IA	\$272,000.00
Peterson Contractors, Inc.	Reinbeck, IA	\$358,900.00

Staff recommends the acceptance of the low bidder, Engineering Consultants, Inc.

Moved – Commissioner Rettig
Seconded - Commissioner Francisco
Discussion – Commissioner Francisco asked if they would be using the CCC bridge design. Don Labate, Engineering Services Bureau Chief responded that the new standard bridge design would be used.
Motion – Carried by Unanimous Vote

5. Land Acquisition Projects

5.1 Brushy Creek State Recreation Area, Webster County – Land Exchange – Phillip Richardson et al

The Natural Resource Commission's approval is requested for the exchange of real estate with Phillip Richardson, Donald Richardson, Norma Richardson, and James Richardson and the DNR. Both tracts are located adjacent to the west side of Brushy Creek State Recreation Area in Webster County.

Jerry Gibson and Rick Hansen mediated the exchange agreement. This agreement was precipitated by an ongoing access dispute, as well as the need for the DNR to realize control of

two earthen water/silt control structures proximate to Brushy Creek Lake. The value of the land to be exchanged is of equal per acre value.

The DNR parcel is gently sloping cropland containing approximately 20 acres, as outlined in green on the exhibit. The Richardson land is two strips of gently sloping cropland containing approximately 17.5 acres (outlined in red) with two water/silt control structures along the east-west strip. The Department plans to construct another structure along the north-south strip to enhance the water quality of the lake.

Both the Department and the Richardson's will remove their existing fences and gating that was installed as a result of the access dispute. The Department will also extinguish the 20 foot wide access easement that is the subject of the dispute (blue line on the exhibit). The Richardson's will in turn transfer to the DNR in fee title a 25 foot wide strip for improved access to the area (as shown by the yellow line).

The Parks Bureau will manage the property in accord with the area management plan. The Richardson's will pay for the three land surveys required for the land exchange, as well as provide for filing fees for the patent.

Staff recommends approval of the land exchange.

Moved – Commissioner Kircher

Seconded - Commissioner Kramer

Discussion – Commissioner Kramer asked for clarification of the surrounding land ownership. Travis Baker, Realty Services Supervisor explained using a map where the land in question was. Commissioner Drees inquired how the land would be used. Jerry Gibson with Realty Services responded that it would be crop land and previous year had been corn. Attorney Kelley Myers stated that Iowa code section 456a.24 gave the department the ability to consolidate land. Commissioner Garst asked if all the land the department was receiving in the exchange was all 100% farmable crop ground. Jerry Gibson responded that all except for the draws which may not equal more than 1 acre. Travis Baker explained that once all of the surveys (3) are completed the exact land area measurements would be known. He also informed the commission that the Richardson's are also paying for all incidental costs involved with the exchange. Commissioner Garst inquired about farm equipment access to the newly acquired land. Jerry Gibson explained using the map provided to illustrate how access would be achieved. Travis also pointed out that in the negotiations it will be written in the contracts that the department would have right of first refusal so that if the Richardson's ever wanted to sell the department would have the right to purchase first.

Motion – Carried by Unanimous Vote

5.2 Lake Wapello State Park, Davis County – Dean & Lois Eakins

The Natural Resource Commission's approval is requested to accept the donation of a permanent easement for a silt basin and earthen water retention dam adjacent south of Lake Wapello State Park in western Davis County. The donors are Dean and Lois Eakins. The easement shall serve as temporary and permanent storage of water and retention of silt on an area totaling approximately 1.5 acres lying below top of the earthen dam. The donors also grant access to the State and its authorized agents across their property as needed for construction of the silt basin.

Rick Hansen negotiated the easement grant.

This property is located adjacent south of Lake Wapello State Park. The easement segment is heavily forested ravine. A portion of the earthen dam is designed to be located on the Eakins property, with the balance of the earthen embankment on DNR land. The dam and associated basin will be designed to trap sediment and to impound water to reduce runoff of soil and nutrients into Lake Wapello. The project will cause water impoundment and sediment retention within the basin and located on a portion of the subject property. During extreme precipitation runoff, floodwater could result in occasional flooding to the top of the silt retention dam.

This easement will become part of the Lake Wapello State Park, and will be managed by the Parks Bureau in accord with the area management plan. Incidental closing costs will be the responsibility of the Department.

Staff recommends approval of the easement acquisition.

Moved – Commissioner Garst

Seconded - Commissioner Francisco

Discussion – Commissioner Drees asked how large the lake is. Commissioner Bird responded approximately 275 acres, he knew as he spent thirteen years at the park as a conservation officer. Commissioner Garst stated that she hopes the gift to the state is acknowledged.

Motion – Carried by Unanimous Vote

6. Land Management Projects

6.1 Albright Bridge Access – Hamilton County Conservation

The Natural Resource Commission's approval is requested for the renewal of a management agreement between the Hamilton County Conservation Board and the DNR. This agreement authorizes the Hamilton County Conservation Board to manage the Albright Bridge Access through February 28, 2034.

The agreement covers 10.77 acres of bottomland timber and reconstructed prairie adjacent to the Boone River, three miles south of Webster City. The area will be managed as a river access. Hunting is also allowed on the area.

The area has been managed by Hamilton County since 1981. The county desires to continue the agreement.

Staff recommends approval of the management agreement.

Moved – Commissioner Drees
Seconded - Commissioner Garst
Discussion – Commissioner Garst asked why after 28 years renew this agreement. Travis Baker responded that he believed the original agreement had been a 25 year agreement and simply forgotten about for the last three, this is a 'house cleaning' item. The new management agreement will go until 2034.
Motion – Carried by Unanimous Vote

6.2 Management Agreement – Tunnel Mill Access – Hamilton County Conservation Board

The Natural Resource Commission's approval is requested for the renewal of a management agreement between Hamilton County Conservation Board and the DNR. This agreement authorizes the Hamilton County Conservation Board to manage the Tunnel Mill Access through February 28, 2034.

The agreement covers approximately 2.5 acres of the Tunnel Mill Access Area adjacent to the Boone River, 6.5 miles south of Webster City. The County will manage the canoe area, parking lot and associated access road. The area will be managed as a river access. Hunting is also allowed on the area.

The area has been managed by Hamilton County since 1980. The county desires to continue the agreement.

Staff recommends approval of the management agreement.

Moved – Commissioner Rettig
Seconded - Commissioner Kircher
Discussion – none
Motion – Carried by Unanimous Vote

7. Chapter 15 – General License Regulations: NOIA

The Commission is requested to approve the attached Notice of Intended Action to amend Chapter 15 “General License Regulations.” This amendment is proposed to revise the rules to remain consistent with electronic license sales contract and equipment upgrades and for general organization and clean up.

The Electronic Licensing System for Iowa (ELSI) has successfully sold hunting and fishing licenses since 2001 and has been well received by both license sellers and buyers. The department has executed a new contract with the existing vendor to which includes the transition to a new system (ELSI 2). ELSI 2 will incorporate new technology and move to a web-based system. These changes offer a number of improvements to the current system that benefit license sellers and buyers as well as the department. Changes to the existing rule are required in order to be consistent with the new electronic license sales system.

The proposed amendment rescinds the prior chapter and adopts a new one. The amendments will update from the original ELSI license sells procedures to ELSI 2 procedures and technology. Adoption will also provide for organization and general clean up. It is proposed to have an effective date to coincide with ELSI 2 switch over, projected to be late summer 2009. There are no fee changes proposed with this rule.

Attachment: Notice of Intended Action: Chapter 15, General License Regulations

NATURAL RESOURCE COMMISSION [571] Notice of Intended Action

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 15 “General License Regulations,” and adopt a **new** Chapter 15 with the same title, Iowa Administrative Code.

The proposed amendment rescinds the prior chapter and adopts a new one. This amendment revises the rules to remain consistent with a new electronic license sales contract for the Electronic Licensing System of Iowa 2 and the associated equipment upgrades. The amendment also reorganizes to provide the regulations in a more intuitive order and to anticipate and allow for future changes to other portions of the rule. No fee changes are proposed in the rule.

Any interested person may make written suggestions or comments on the proposed **new** Chapter 15 on or before March 31, 2009. Such written materials should be directed to Mark Warren, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa, 50319-0034; fax (515)281-6794; or E-Mail Mark.Warren@dnr.iowa.gov. Persons who wish to convey their views orally should contact Dave Cretors at (515)281-8907 or at Mark Warren’s offices on the fourth floor of the Wallace State Office Building.

This amendment is intended to implement Iowa Code chapters 321G, 456A, 462A, 481A, 481B, 482, 483A, 484A, and 484B.

The following amendment is proposed.

Rescind 571—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15

GENERAL LICENSE REGULATIONS

571—15.1(483A) Scope. The purpose of this chapter is to provide rules for license sales, refunds and administration; implement the wildlife violator compact and multiple offender penalties; implement special licenses available for hunting and fishing; and describe and implement certification and education programs of the department of natural resources.

DIVISION I

LICENSE SALES, REFUNDS AND ADMINISTRATION

571—15.2(483A) Definitions. For the purposes of this division of the rules, the following definitions shall apply:

“Administration fee” means the fee collected by the department to pay a portion of the cost of administering the sale of licenses through electronic means.

“Department” means the department of natural resources.

“Director” means the director of the department of natural resources.

“License” means any license or privilege issued by the department to an individual for hunting or fishing in the state of Iowa. There are multiple types of licenses described in these rules.

“License seller” means a retail business establishment, an office of a government entity, or a nonprofit corporation designated by the director to issue licenses to the public. For the purposes of Chapter 15, “license sellers” shall be synonymous with “depositories” as used in Iowa Code chapter 483A.

“Licensee” means the person who applies for and receives a license under these rules from the department.

“Retail” means the sales of goods or commodities to the ultimate consumer, as opposed to the sale of goods or commodities for further distribution or processing.

“Wholesale” means the sale of goods or commodities for resale by a retailer, as opposed to the sale of goods or commodities to the ultimate consumer.

571—15.3(483A) Form of licenses. All licenses shall contain a general description of the licensee. Individual license applicants must also provide their date of birth and either their social security number or a valid Iowa driver’s license number at the time of application. The license shall be signed by the applicant. The license shall clearly indicate the privilege granted.

571—15.4(483A) Administration fee. An administration fee of 50 cents per privilege purchased shall be collected from the purchaser at the time of purchase, except upon the issuance of free landowner deer and turkey licenses, free annual hunting and fishing licenses, free lifetime fishing licenses, and free group home fishing licenses.

571—15.5(483A) Electronic license sales.

15.5(1) The director may designate a retail business establishment, an office of a government entity, or a nonprofit corporation as a seller of electronically issued licenses in accordance with the provisions of this rule. The provisions of 571—15.6(483A) shall not apply to a license seller engaging in, or applying to engage in, the electronic sale and issuance of licenses.

15.5(2) Application. Application forms to sell electronically issued licenses may be secured by a written or in-person request to the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. The following information must be provided on the application form:

- a. The legal name, address, and telephone number of the entity applying for designation;
- b. The hours open for business and general service to the public;

- c. A brief statement of the nature of the business or service provided by the applicant;
- d. Type of internet connection used for accessing the electronic license sales system (dial up or high speed); and
- e. A signature by an owner, partner, authorized corporate official, or public official of the entity applying for designation.

15.5(3) Designation. The director shall approve or deny the application to sell electronically issued licenses based upon the following criteria:

- a. The need for a license seller in the area;
- b. The hours the applicant is open for business or general service to the public;
- c. The potential volume of license sales;
- d. The apparent financial stability and longevity of the license seller;
- e. The number of point-of-sale (POS) terminals available to the department; and
- f. Type of internet connection used for accessing the electronic license sales system (dial up or high speed).

If necessary, the department may utilize a waiting list for license sales designation. The order of priority for the waiting list will be determined by the submittal of a complete and correct application and receipt of the required security deposit, as outlined in the application.

15.5(4) Issuance of electronic licensing equipment. Upon the director's approval of an application under this rule and designation of a license seller for electronic license sales, the equipment necessary to conduct such sales will be issued to the license seller by the department subject to the following terms and conditions:

- a. Prior to the issuance of the electronic licensing equipment, the approved electronic license seller shall furnish to the department an equipment security deposit in an amount to be determined by the department.

- b. Prior to the issuance of the electronic licensing equipment, the approved electronic license seller shall enter into an electronic license sales agreement with the department which sets forth the terms and conditions of such sales including the authorized amounts to be retained by the license seller.

- c. Prior to the issuance of the electronic licensing equipment, the approved electronic license seller shall furnish to the department a signed authorization agreement for electronic funds transfer pursuant to subrule 15.5(5).

- d. Electronic licensing equipment and supplies must be stored in a manner to provide protection from damage, theft, and unauthorized access. Any damage or loss of equipment or loss of moneys derived from license sales is the responsibility of the electronic license seller.

- e. Upon termination of the agreement by either party, all equipment and supplies, as outlined in the agreement, must be returned to the department. Failure to return equipment and supplies in a usable condition, excluding normal wear and tear, will result in the forfeiture of deposit in addition to any other remedies available by law to the department.

15.5(5) License fees. All moneys received from the sale of licenses, less and except the agreed-upon service fee, must be immediately deposited and held in trust for the department of natural resources.

- a. All approved applicants must furnish to the department a signed authorization agreement for electronic funds transfer authorizing access by the department to a bank account for electronic transfer of license fees received by the license seller.

- b. The amount of money due for accumulated sales will be drawn electronically by the department on a weekly basis. The license seller shall be given notice of the amount to be withdrawn at least two business days before the actual transfer of funds occurs. The license seller is responsible for ensuring that enough money is in the account to cover the amount due for

accumulated sales.

c. License sellers may accept or decline payment in any manner other than cash, such as personal checks or credit cards, at their discretion. Checks or credit payments must be made payable to the license seller and not to the department. The license seller shall be responsible for ensuring that the license fee is deposited in the electronic transfer account, regardless of the payment or nonpayment status of any check accepted by the license seller.

15.5(6) Upon the termination of the electronic license sales agreement pursuant to subrule 15.5(7) or 15.5(8), the department may disconnect or otherwise block the license seller's access to the electronic license sales system.

15.5(7) Equipment shut down and termination. The department reserves the right to disconnect the license seller's access to the electronic license system or terminate the seller's electronic license sales agreement for cause. Cause shall include, but is not limited to, the following:

- a. Failure by the license seller to deposit license fees into the electronic transfer account in a sum sufficient to cover the amount due for accumulated sales;
- b. Charging or collecting any fees in excess of those authorized by law;
- c. Discriminating in the sale of a license in violation of state or federal law;
- d. Knowingly making a false entry concerning any license sold or knowingly issuing a license to a person who is not eligible for the license issued;
- e. The personal, including business, use of license sale proceeds other than the service fee by the license seller;
- f. The disconnecting or blocking of access to the electronic license sales system for a period of 30 days or more or
- g. Violations of these rules or the terms of the electronic license sales agreement.

Repeated violations of these rules may result in termination of the seller's electronic license sales agreement.

15.5(8) Voluntary termination. A license seller may terminate its designation and the electronic license sales agreement at its discretion by providing written notice to the department. Voluntary termination shall become effective 30 days after the department's receipt of notice.

571—15.6(483A) License depositaries.

15.6(1) Depositary designation. The director may designate a retail business establishment, an office of a government entity, or a nonprofit corporation as a depositary for the sale of hunting and fishing licenses in accordance with the provisions of this rule.

15.6(2) Application. Application forms to act as a depositary may be secured by a written or verbal request to the Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034. Requests for forms may be made through department field staff or field officers. The applicant must provide the following information on the form:

- a. The name of the retail business establishment, government entity, or nonprofit corporation, and location(s) and telephone numbers.
- b. A general description of the type of retail business establishment, government entity, or nonprofit corporation.
- c. The form of ownership if a retail business establishment. If a partnership, the full names and addresses of all partners must be provided. If a corporation, the date and state of incorporation must be provided.
- d. If a government entity, the name and title of the responsible official.
- e. If a nonprofit corporation, the date and state of incorporation.
- f. The hours and days open to the public.

g. The office and residence telephone number of the person signing the application.

h. The name, address, and telephone number of three credit references, including the bank used by the retail business establishment, government entity, or nonprofit corporation.

The application forms contain a statement to be signed agreeing to the terms and conditions as set forth in this rule. The application must be signed by the owner if a sole proprietorship; by a partner if a partnership; if a corporation, by an authorized corporate official; or by the elected or appointed official administratively in charge of the government entity. The signature must be attested to by a notary public.

15.6(3) Security. The applicant under this rule must provide security, either a surety bond from an association or corporation which does the business of assuring the fidelity of others, and which has the authority by law to do business in this state, a collateral assignment of a certificate of deposit, or a letter of credit.

a. Condition of security. A surety bond required by this rule shall generally provide that the applicant render a true account of, and turn over all moneys, license blanks, and duplicates when requested to do so by the director or an authorized representative, and to comply with all applicable provisions of the application, the Iowa Administrative Code, and the Iowa Code.

b. Amount of security. All forms of security required by this rule shall be in the amount of \$5,000 each, or a larger amount as jointly agreed to by the agency and the depository.

c. Term of bond. The bond required by this rule shall run continuously from the date the application is approved.

d. Termination of bond. The surety or principal may terminate the bond at any time by sending written notice by certified mail, return receipt requested, to the Director, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. The termination shall become effective 30 days after the receipt of the notice by the director.

e. Collateral assignment of a certificate of deposit and letters of credit. Collateral assignments of certificates of deposit and letters of credit shall be subject to the following terms and conditions:

(1) Certificates of deposit shall be assigned to the department, in writing, and the assignment shall be recorded on the books of the bank issuing the certificate.

(2) Banks issuing these certificates shall waive all rights of setoff or liens which they have or might have against these certificates.

(3) Certificates of deposit shall be automatically renewed unless the director approves release of the funds in writing. Letters of credit shall be without reservation and shall remain in effect continuously, or as otherwise agreed to by the director.

(4) The director will release the certificates of deposit or approve the cancellation of a letter of credit upon termination of a license depository agreement if all licenses and moneys have been accounted for satisfactorily, or if the depository provides a satisfactory surety bond in lieu thereof.

15.6(4) Approval of application and security. The director will approve the application upon the receipt of a satisfactory bond, collateral assignment of deposit, or letter of credit and a determination that the credit references are satisfactory. However, the director reserves the right not to approve any application received from a party whose depository agreement has previously been terminated by the department for cause. Upon approval by the director, the agency will provide the depository with license blanks, reporting forms, and instructions.

15.6(5) Depository reporting standards. All depositories shall comply with the following reporting standards:

a. Monthly reports. A full and complete monthly sales report, including duplicate copies of the licenses sold and a check or other monetary instrument in the amount due shall be remitted to

the department on a prescheduled due date of the following month. A depositary which does not provide the monthly report to the department within 10 days after the due date shall be considered seriously delinquent. However, if the office or business is operated on a seasonal basis, a monthly report is not required for any month that the office or business is not open to the public.

b. Annual report. The annual report for all sales for the calendar year and including the return of all unused license blanks shall be remitted to the department by January 31 of each year. An annual report shall also be submitted at the time a depositary is terminated for any reason during the calendar year. This report must be received within 15 days after the director receives the notice of termination. A depositary will be considered seriously delinquent if the annual report is not received by February 15.

c. Accountability. The depositary shall be fully accountable to the state for all proceeds collected from the sale of licenses. This accountability shall not be diminished by reason of bankruptcy, fire loss, theft loss, or other similar reason.

d. Probation. A depositary shall be placed on probation by a notice sent by certified mail, return receipt requested, when any of the following circumstances occur:

(1) A depositary is seriously delinquent for the second time during any consecutive six-month period.

(2) A depositary fails to correct a serious delinquency within ten days.

(3) A check is returned by the bank by reason of insufficient funds.

The probation will be automatically canceled after six months of satisfactory performance.

e. Termination of depositary. A depositary may terminate the agreement at any time by notifying the director by certified mail, return receipt requested. The termination shall be effective 30 days after the receipt of the notice by the director, and after the depositary has fully accounted for all moneys and unused license blanks. The director may terminate the depositary agreement and require an immediate and full accounting of all moneys and unused license blanks under any of the following circumstances:

(1) The occurrence of a third serious delinquency during any consecutive six-month period.

(2) Not making an insufficient funds check good within 10 days after proper notice by the director.

(3) Failure to correct a serious delinquency within 15 calendar days.

(4) Knowingly placing a date, other than the correct date, on any license.

(5) Knowingly selling a resident license to a nonresident, or selling a senior citizen or disabled license to a person not qualified for such license.

(6) Charging more than the statutory writing fee.

(7) Refusal to sell a license to any individual by reason of race, creed, nationality, or religion.

(8) Expiration or cancellation of bond, certificate of deposit, or letter of credit.

(9) A depositary fails to make a full and complete monthly sales report and monthly remittance.

(10) A depositary, or employee of a depositary, knowingly makes a false entry on any license being sold, or knowingly issues any license to a person to whom issuance of that license is improper.

15.6(6) Multiple establishment locations. An application and security may be submitted for retail business establishments with multiple locations. For purposes of reporting and for determining the amount of the security, each application will be considered on a case-by-case basis and as mutually agreed upon by the depositary and the director.

15.6(7) Forms for application, bond, monthly report and collateral as assignment. Copies of

required forms may be obtained by writing the License Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319; or by calling (515)281-8688.

571—15.7(483A) Lost or destroyed license blanks.

15.7(1) Accountability for license blanks. Whenever a depositary appointed by the director or a county recorder requests to be relieved from accountability for license blanks that have been lost or destroyed, the depositary or recorder shall file a bond for the face value of such lost or destroyed license blanks and provide an explanation to the director.

15.7(2) Explanation. The depositary or recorder shall submit a written statement in the form of an affidavit regarding the facts and circumstances surrounding the alleged loss or destruction. Pictures, drawings, or other pertinent information may be attached and referenced in the statement. The loss or destruction must relate to one or a combination of the following reasons:

- a. Loss or destruction by fire.
- b. Loss from theft.
- c. Loss while in transit.
- d. Loss from natural causes, including but not limited to floods, tornadoes, and severe storms.
- e. Loss or accidental destruction in a course of normal business operations or facility maintenance and repair.

The statement must also include a specific description of the precautions and procedures normally utilized by the recorder or depositary to prevent or to guard against the loss or destruction described, and a further statement as to why the precautions or procedures failed in this particular instance.

15.7(3) Review and determination by director. The director shall consider the written explanation as provided. The director shall also consider the past record of the depositary or recorder regarding losses and destructions; the past record of the depositary or recorder regarding prompt and accurate reporting; and may direct further investigations into the circumstances and facts by department staff.

If the director determines that the depositary or recorder exercised reasonable and prudent care, the director shall relieve the depositary or recorder of accountability upon the filing of a bond.

If the director determines that there was gross negligence by the depositary or recorder and holds the depositary or recorder accountable, the depositary or recorder may file a request for a contested case proceeding as provided in the Iowa Administrative Code 571—Chapter 7.

15.7(4) Bond. The depositary or recorder shall provide a bond in the amount of the face value of the lost or destroyed licenses on a bond form provided by the department. The bond will be conditioned to the effect that the depositary or recorder agrees to surrender the subject licenses to the department in the event that they are located at any future time; or in the event of proof showing that any or all of the subject licenses have been issued, the depositary, recorder, or sureties jointly and severally agree to pay the state the face value of all licenses covered by the bond.

For a face amount of \$500 or less, the personal bond of the depositary or recorder is sufficient. One additional personal surety is required for a face amount up to \$1,000; and two personal sureties, in addition to the depositary or recorder, are required if the face amount is over \$1,000. A corporate surety authorized to do business in Iowa may be provided in lieu of the personal sureties required, in addition to the depositary or recorder.

The value assigned to a lost or destroyed blank license form shall be \$25. This amount will be paid by the depositary to the department, except as relief from such payment is provided

according to subrules 15.7(1) to 15.7(3).

571—15.8(483A) Refunds or changes for special deer and turkey licenses and general licenses.

15.8(1) Invalid applications. Deer and turkey license applications that are received too late for processing after the closing date for acceptance of applications or applications that are invalid on their face will be returned unopened to the applicant. License fees related to applications which are determined to be invalid by a computer analysis or other analysis after the applications have been processed will be refunded to the applicant, less a \$10 invalid application fee to compensate for the additional processing cost related to an invalid application.

15.8(2) Death of applicant. Deer or turkey license fees will be refunded to the applicant's estate when the licensee's death predates the season for which the license was issued and a written request is received from the licensee's spouse, executor or estate administrator within 90 days of the last date for which the license was issued.

15.8(3) National or state emergency. Deer or turkey license fees will be refunded if the licensee is a member of the National Guard or a reserve unit and is activated for a national or state emergency which occurs during the season for which the license was issued. A written refund request must be received by the DNR within 90 days of the last date of the season for which the license was issued.

15.8(4) License changes. The agency will attempt to change an applicant's choice of season or type of license if a written or telephonic request is received by the license bureau in sufficient time, usually 20 days, prior to printing the license, and if the requested change does not result in disadvantage to another applicant. Telephonic change requests must be verified in writing by the requester before a change request will be honored. The agency's ability to accommodate requests to change season or license type is dependent on workload and processing considerations. If the agency cannot accommodate a request to change a season or type choice, the license will be issued as originally requested by the applicant. No refund will be allowed. The agency will not change the name on the license from that submitted on the application.

15.8(5) General hunting and fishing licenses duplicate purchase. Upon a showing of sufficient documentation, usually a photocopy of the licenses, that more than one hunting or fishing license was purchased by or for a single person, the agency will refund the amount related to the duplicate purchase. A written refund request, with supporting documentation, must be received by the license bureau within 90 days of the date on the face of the duplicate licenses.

15.8(6) Other refund requests. Except as previously described, the agency will not issue refunds for any licenses, stamps or licenses related to fishing and hunting.

571—15.9 to 15.15(483A) Reserved.

DIVISION II

MULTIPLE OFFENDER AND WILDLIFE VIOLATOR COMPACT

571—15.16(481A,481B,482,483A,484A,484B) Multiple offenders—revocation and suspension of hunting, fishing, and trapping privileges from those persons who are determined to be multiple offenders.

15.16(1) Definitions. For the purpose of this rule, the following definitions shall apply:
“Department” means the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034.

“License” means any paid or free license, permit, or certificate to hunt, fish, or trap listed in Iowa Code chapters 481A, 481B, 482, 483A, 484A, 484B, and 716, including the authorization to

hunt, fish, or trap pursuant to any reciprocity agreements with neighboring states.

“Licensee” means the holder of any license.

“Multiple offender” means any person who has equaled or exceeded five points for convictions in Iowa Code chapters 481A, 481B, 482, 483A, 484A, 484B, and 716 during a consecutive three-year period as provided in 15.6(3).

“Revocation” means the taking or cancellation of an existing license.

“Suspension” means to bar or exclude one from applying for or acquiring licenses for future seasons.

15.16(2) Record-keeping procedures. For the purpose of administering this rule it shall be the responsibility of the clerk of district court for each county to deliver, on a weekly basis, disposition reports of each charge filed under Iowa Code chapters 481A, 481B, 482, 483A, 484A, 484B, and 716 to the department. Dispositions and orders of the court of all cases filed on the chapters listed in this subrule shall be sent to the department regardless of the jurisdiction or the department of the initiating officer.

a. License suspensions. In the event of a license suspension pursuant to Iowa Code section 481A.133, the clerk of court shall immediately notify the department.

b. Entering information. Upon receipt of the information from the clerks of court, the department will, on a weekly basis, enter this information into a computerized system that is directly accessible by the department of public safety communications system for use by the department’s license bureau, and all state and local law enforcement officers. Direct access through the department of public safety communications system will be available as soon as practical and is dependent on the development of appropriate computer linkage by the department of public safety.

c. Disposition report information. Information from the disposition report that will be entered into a computerized system which includes but may not be limited to the following: County of violation, name of defendant, address of defendant, social security or driver’s license number, date of birth, race, sex, height, weight, date and time of violation, charge and Iowa Code section, officer name/C-number who filed charge, and date of conviction.

15.16(3) Point values assigned to convictions. For the purposes of defining a multiple offender the person shall be classified as a multiple offender when the person equals or exceeds a total of five points during a consecutive three-year period using the values attached to the following offenses. Multiple citations and convictions of the same offense will be added as separate convictions:

a. Convictions of the following offenses shall have a point value of three attached to them:

- (1) Illegal sale of birds, game, fish, or bait.
- (2) More than the possession or bag limit for any species of game or fish.
- (3) Hunting, trapping, or fishing during the closed season.
- (4) Hunting by artificial light.
- (5) Hunting from aircraft, snowmobiles, all-terrain vehicles or motor vehicle.
- (6) Any violation involving threatened or endangered species.
- (7) Any violations of Iowa Code chapter 482 except sections 482.6 and 482.14.
- (8) Any violation of nonresident license requirements.
- (9) No fur dealer license (resident or nonresident).
- (10) Illegal taking or possession of protected nongame species.
- (11) The taking of any fish, game, or furbearing animal by illegal methods.
- (12) Illegal taking, possession, or transporting of a raptor.
- (13) Hunting, fishing, or trapping while under license suspension or revocation.
- (14) Illegal removal of fish, minnows, frogs, or other aquatic wildlife from a state fish

hatchery.

- (15) Any fur dealer violations except failure to submit a timely annual report.
- (16) Any resident or nonresident making false claims to obtain a license.
- (17) Illegal taking or possession of hen pheasant.
- (18) Applying for or acquiring a license while under suspension or revocation.
- (19) For a repeat offense of acquiring a hunting license without hunter safety certification.
- (20) Taking game from the wild—see Iowa Code section 481A.61.
- (21) Violation of Iowa Code section 483A.27(7).
- (22) Any violation of Iowa Code Supplement section 716.8 as amended by 2008 Iowa Acts, House File 2612, section 21, while hunting deer.

b. Convictions of the following offenses shall have a point value of two attached to them:

- (1) Hunting, fishing, or trapping on a refuge.
- (2) Illegal possession of fur, fish, or game.
- (3) Chasing wildlife from or disturbing dens.
- (4) Trapping within 200 yards of an occupied building or private drive.
- (5) Possession of undersized or oversized fish.
- (6) Snagging of game fish.
- (7) Shooting within 200 yards of occupied building or feedlot.
- (8) No valid resident license relating to deer or turkey.
- (9) Illegal importation of fur, fish, or game.
- (10) Failure to exhibit catch to an officer.
- (11) Trapping or poisoning game birds, or poisoning game animals.
- (12) Violations of Iowa Code section 481A.64 pertaining to private fish hatcheries.
- (13) Violations of the fur dealers reporting requirements.
- (14) Violation of Iowa Code section 481A.126 pertaining to taxidermy.
- (15) Loaded gun in a vehicle.
- (16) Attempting to take any fish, game, or furbearing animals by illegal methods.
- (17) Attempting to take game before or after legal shooting hours.
- (18) Wanton waste of fish, game or furbearing animals.
- (19) Illegal discharge of a firearm pursuant to Iowa Code section 481A.54.
- (20) Any violation of Iowa Code section 482.14 pertaining to commercial fishing.
- (21) Failure to tag deer or turkey.
- (22) Applying for or obtaining more than the legal number of licenses allowed for deer or

turkey.

- (23) Illegal transportation of game, fish or furbearers.
- (24) Violation of Iowa Code section 483A.27, except subsection (7).

c. All other convictions of provisions in Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B shall have a point value of one attached to them.

15.16(4) Length of suspension or revocation.

a. The term of license suspension or revocation shall be determined by the total points accumulated during any consecutive three-year period, according to the following: 5 points through 8 points is one year, 9 points through 12 points is two years, and 13 points or over is three years.

b. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code subsection 481A.135(2) shall have an additional suspension of one year. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code subsection 481A.135(3) shall have an additional

suspension of two years. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code subsection 481A.135(4) shall have an additional suspension of three years. The foregoing provisions apply whether or not a person has been found guilty of a simple misdemeanor, serious misdemeanor or aggravated misdemeanor pursuant to Iowa Code subsections 481A.135(2), 481A.135(3) and 481A.135(4). If a magistrate suspends the privilege of a defendant to procure another license and the conviction contributes to the accumulation of a point total that requires the department to initiate a suspension, the term of suspension shall run consecutively up to a maximum of five years. After a five-year suspension, remaining time will be calculated at a concurrent rate.

15.16(5) Points applicable toward suspension or revocation. If a person pleads guilty or is found guilty of an offense for which points have been established by this rule but is given a suspended sentence or deferred sentence by the court as defined in Iowa Code section 907.1, the assigned points will become part of that person's violation record and apply toward a department suspension or revocation.

15.16(6) Notification of intent to suspend or revoke license. If a person reaches a total of five or more points, the department shall provide written notice of intent to revoke and suspend hunting, fishing, or trapping licenses as provided in 571—Chapter 7. If the person requests a hearing, it shall be conducted in accordance with 571—Chapter 7.

15.16(7) Dates of suspension or revocation. The suspension or revocation shall be effective upon failure of the person to request a hearing within 30 days of the notice described in 15.16(6) or upon issuance of an order affirming the department's intent to suspend or revoke the license after the hearing. The person shall immediately surrender all licenses and shall not apply for or obtain new licenses for the full term of the suspension or revocation.

15.16(8) Magistrate authority. This chapter does not limit the magistrate authority as described in Iowa Code section 483A.21.

15.16(9) Suspension for failure to comply with a child support order. The department is required to suspend or deny all licenses of an individual upon receipt of a certificate of noncompliance with child support obligation from the Iowa child support recovery unit pursuant to Iowa Code section 252J.8(4).

a. The receipt by the department of the certificate of noncompliance shall be conclusive evidence. Pursuant to Iowa Code section 252J.8(4), the person does not have a right to a hearing before the department to contest the denial or suspension action taken due to the department's receipt of a certificate of noncompliance with a child support obligation but may seek a hearing in district court in accordance with Iowa Code section 252J.9.

b. Suspensions for noncompliance with a child support obligation shall continue until the department receives a withdrawal of the certificate of noncompliance from the Iowa child support recovery unit.

c. After the department receives a withdrawal of the certificate of noncompliance, an individual may obtain a new license upon application and the payment of all applicable fees.

571—15.17(456A) Wildlife violator compact. The department has entered into the wildlife violator compact (the compact) with other states for the uniform enforcement of license suspensions. The compact, a copy of which may be obtained by contacting the department's law enforcement bureau, is adopted herein by reference. The procedures set forth in this rule shall apply to license suspensions pursuant to the wildlife violator compact.

15.17(1) Definitions. For purposes of this rule, the following definitions shall apply: "Compliance" with respect to a citation means the act of answering a citation through an

appearance in a court or through the payment of all fines, costs, and surcharges, if any.

“Department” means the Iowa department of natural resources.

“Home state” means the state of primary residence of a person.

“Issuing state” means a participating state that issues a fish or wildlife citation to a person.

“License” means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any fish or wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a participating state.

“Participating state” means any state which enacts legislation to become a member of the wildlife violator compact. Iowa is a participating state pursuant to Iowa Code section 456A.24(14).

15.17(2) Suspension of licenses for noncompliance. Upon the receipt of a valid Notice of Failure to Comply, as defined in the compact, the department shall issue a notice of suspension to the Iowa resident. The notice of suspension shall:

a. Indicate that all department-issued hunting (including furbearer) or fishing licenses shall be suspended, effective 30 days from the receipt of the notice, unless the department receives proof of compliance.

b. Inform the violator of the facts behind the suspension with special emphasis on the procedures to be followed in resolving the matter with the court in the issuing state. Accurate information in regard to the court (name, address, telephone number) must be provided in the notice of suspension.

c. Notify the license holder of the right to appeal the notice of suspension within 30 days of receipt. Said appeal shall be conducted pursuant to 571—Chapter 7 but shall be limited to the issues of whether the person so notified has a pending charge in the issuing state, whether the person has previously received notice of the violation from the issuing state, and whether the pending charge is subject to a license suspension for failure to comply pursuant to the terms of the compact.

d. Notify the license holder that, prior to the effective date of suspension, a person may avoid suspension through an appearance in the court with jurisdiction over the underlying violations or through the payment of all fines, costs, and surcharges associated with the violations.

e. Indicate that, once a suspension has become effective, the suspension may only be lifted upon the final resolution of the underlying violations.

15.17(3) Reinstatement of licenses. Any license suspended pursuant to this rule may be reinstated upon the receipt of an acknowledgement of compliance from the issuing state, a copy of a court judgment, or a certificate from the court with jurisdiction over the underlying violations and the payment of applicable Iowa license fees.

15.17(4) Issuance of notice of failure to comply. When a nonresident is issued a citation by the state of Iowa for violations of any provisions under the jurisdiction of the natural resource commission which is covered by the suspension procedures of the compact and fails to timely resolve said citation by payment of applicable fines or by properly contesting the citation through the courts, the department shall issue a notice of failure to comply.

a. The notice of failure to comply shall be delivered to the violator by certified mail, return receipt requested, or by personal service.

b. The notice of failure to comply shall provide the violator with 14 days to comply with the terms of the citation. The violator may avoid the imposition of the suspension by answering a citation through an appearance in a court or through the payment of all fines, costs, and surcharges, if any.

c. If the violator fails to achieve compliance, as defined in this rule, within 14 days of

receipt of the notice of failure to comply, the department shall forward a copy of the notice of failure to comply to the home state of the violator.

15.17(5) Issuance of acknowledgement of compliance. When a person who has previously been issued a notice of failure to comply achieves compliance, as defined in this rule, the department shall issue an acknowledgement of compliance to the person who was issued the notice of failure to comply.

15.17(6) Reciprocal recognition of suspensions. Upon receipt of notification from a state that is a member of the wildlife violator compact that the state has suspended or revoked any person's hunting or fishing license privileges, the department shall:

- a. Enter the person's identifying information into the records of the department.
- b. Deny all applications for licenses to the person for the term of the suspension or until the department is notified by the suspending state that the suspension has been lifted.

571—15.18 to 15.20 Reserved.

DIVISION III SPECIAL LICENSES

571—15.21(483A) Fishing license exemption for patients of substance abuse facilities.

15.21(1) Definition. For the purpose of this rule, the definition of "substance abuse facility" is identical to the definition of "facility" in Iowa Code subsection 125.2(2).

15.21(2) Procedure. Each substance abuse facility may apply to the department of natural resources for a license exempting patients from the fishing license requirement while fishing as a supervised group as follows:

- a. Application shall be made on a form provided by the department and shall include the name, address and telephone number of the substance abuse facility including the name of the contact person. A general description of the type of services or care offered by the facility must be included as well as the expected number of participants in the fishing program and the water bodies to be fished.

- b. A license will be issued to qualifying substance abuse facilities and will be valid for all patients under the care of that facility.

- c. Patients of the substance abuse facility must be supervised by an employee of the facility while fishing without a license pursuant to this rule. An employee of the substance abuse facility must have the license in possession while supervising the fishing activity of patients.

- d. Notwithstanding the provisions of this rule, each employee of the substance abuse facility must possess a valid fishing license while participating in fishing.

571—15.22(481A) Authorization to use a crossbow for deer and turkey hunting during the bow season by handicapped individuals.

15.22(1) Definitions. For the purpose of this rule:

"Bow and arrow" means a compound, recurve, or longbow.

"Crossbow" means a weapon consisting of a bow mounted transversely on a stock or frame and designed to fire a bolt, arrow, or quarrel by the release of the bow string which is controlled by a mechanical or electric trigger and a working safety.

"Handicapped" means a person possessing a physical impairment of the upper extremities that makes a person physically incapable of shooting a bow and arrow. This includes difficulty in lifting and reaching with arms as well as difficulty in handling and fingering.

15.22(2) Application for authorization card. An individual requesting use of a crossbow for hunting deer or turkey must submit an application for an authorization card on forms provided by the department. The application must include a statement signed by the applicant's physician declaring that the individual is not physically capable of shooting a bow and arrow. A first-time applicant must submit the authorization card application no later than ten days before the last day

of the license application period for the season the person intends to hunt.

15.22(3) Authorization card—issuance and use. Approved applicants will be issued a card authorizing the individual to hunt deer and turkey with a crossbow. The authorization card must be carried with the license and on the person while hunting deer and turkey and must be exhibited to a conservation officer upon request.

15.22(4) Validity and forfeiture of authorization card. A card authorizing the use of a crossbow for hunting deer and turkey will be valid for as long as the person is incapable of shooting a bow and arrow. If a conservation officer has probable cause to believe the person's handicapped status has improved, making it possible for the person to shoot a bow and arrow, the department may, upon the officer's request, require the person to obtain in writing a current physician's statement.

If the person is unable to obtain a current physician's statement confirming that the person is incapable of shooting a bow and arrow, the department may initiate action to revoke the authorization card pursuant to rule 571—Chapter 7.

15.22(5) Restrictions. Crossbows equipped with pistol grips and designed to be fired with one hand are illegal for taking or attempting to take deer or turkey. All projectiles used in conjunction with a crossbow for deer hunting must be equipped with a broadhead with at least three blades.

571—15.23(483A) Free hunting and fishing license for low-income persons 65 years of age and older, or low-income persons who are permanently disabled.

15.23(1) Purpose. Pursuant to Iowa Code subsection 483A.24(14), the department of natural resources will issue a free annual combination hunting and fishing license to low-income persons who meet the age status or permanently disabled status as defined.

15.23(2) Definitions.

“Age status” means a person who has achieved the sixty-fifth birthday.

“Low-income person” means a person who is a recipient of a program administered by the state department of human services for persons who meet low-income guidelines.

“Permanently disabled” means a person who meets the definition in Iowa Code section 483A.4.

15.23(3) Procedure. Each person shall apply to the department of natural resources for a license as follows:

a. Application shall be made on a form provided by the department and shall include the name, address, height, weight, color of eyes and hair, date of birth, and gender of the applicant. In addition, applicants shall include a copy of an official document such as a birth certificate if claiming age status, or a copy of an award letter from the Social Security Administration or private pension plan if claiming permanent disabled status. The applicant shall indicate on the application which low-income assistance program the applicant is receiving. The application shall include an authorization allowing the department of human services to verify that the applicant is a recipient of the low-income assistance program checked on the application.

b. The free annual combination license will be issued by the department upon receipt of a properly completed application. The license will be valid until January 10 of the subsequent year. Proof of eligibility must be submitted each year in order to obtain a free license.

c. A person whose income falls below the federal poverty guidelines, but is not a recipient of a state assistance program, may apply for this license by providing the following:

(1) A statement listing income from all sources (i.e., social security, retirement income, wages, dividends and interest, cash gifts, rents and royalties, and other cash income).

(2) A copy of any available document that verifies income (i.e., income tax return, bank statement, social security statement, or other document the applicant considers supportive of

income status).

(3) A signed statement by the applicant that the applicant's annual cash income does not exceed the federal poverty limit for the current year.

Federal poverty guidelines are published in February of each year and will be the income standard for applicants from that time until the new limits are available in the subsequent year. The income limit will be shown on the application and will be available upon request from the department.

571—15.23(483A) Free lifetime fishing license for persons who have severe physical or mental disabilities.

15.23(1) Purpose. Pursuant to Iowa Code subsection 483A.24(9), the department of natural resources will issue a free lifetime fishing license to Iowa residents 16 or more years of age who have severe mental or physical disabilities who meet the definitions of "Severe mental disability" and "Severe physical disability" in 15.23(2).

15.23(2) Definitions. For the purposes of this rule, the following definitions apply: "Severe mental disability" means a person who has severe, chronic conditions in all of the following areas which:

1. Are attributable to a mental impairment or combination of mental and physical impairments;
2. Are likely to continue indefinitely;
3. Result in substantial functional limitations in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and
4. Reflect the person's need for a combination and sequence of services which are of lifelong or an extended duration and are individually planned and coordinated.

"Severe physical disability" means a disability that limits or impairs the person's ability to walk under any of the following circumstances:

1. The person cannot walk 200 feet without stopping to rest.
2. The person cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device.
3. The person is restricted by lung disease to such an extent that the person's forced expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than 60 mm/hg on room air at rest.
4. The person must use portable oxygen.
5. The person has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class 3 or Class 4 according to standards set by the American Heart Association. They include:
 - i. Class 3—Persons with cardiac disease resulting in marked limitation of physical activity. The person is comfortable at rest, but less than ordinary activity causes fatigue, palpitation, dyspnea, or angina pain.
 - ii. Class 4—Persons with cardiac disease resulting in inability to carry on any physical activity without discomfort. Symptoms of heart failure or the anginal syndrome may be present even at rest. If any physical activity is undertaken, discomfort is increased.
6. The person is severely limited in the person's ability to walk due to an arthritic, neurological, or orthopedic condition.

15.23(3) Procedure. Each person shall apply to the department of natural resources for a license as follows:

- a. Application shall be made on a form provided by the department and shall include the name, address, home telephone number, height, weight, eye and hair color, date of birth, and

gender of the applicant.

b. The application shall be signed and certified by the applicant's attending physician and, based upon the criteria listed in this rule, declare that the applicant has a severe mental or physical disability.

571—15.24(483A) Transportation tags for military personnel on leave from active duty.

15.24(1) Military transportation tags for deer and turkey. The military transportation tag shall include the following information: name, birth date, current address of military person; species and sex of animal taken; date of kill; and weapon used. Only conservation officers of the department shall be authorized to issue military transportation tags.

15.24(2) Annual limit for military transportation tags. A person receiving a military transportation tag shall be limited to one military deer tag and one military turkey tag annually.

15.24(3) Regulations apply to military personnel. With the exception of the license requirement exemption set forth in Iowa Code section 483A.24(6), all hunting and fishing regulations shall apply to active duty military personnel.

571—15.25 to 15.40 Reserved.

DIVISION IV

EDUCATION AND CERTIFICATION PROGRAMS

571—15.41(483A) Hunter safety and ethics education program. This rule clarifies the term hunting license as used in Iowa Code section 483A.27 in relation to the hunter safety and ethics education course requirement, clarifies the need for exhibiting a hunter safety and ethics education course certificate when applying for a deer or wild turkey license, and explains the requirements for individuals who wish to demonstrate their knowledge of hunter safety and ethics to qualify for purchase of an Iowa hunting license.

571—15.42(483A) Testing procedures.

15.41(1) General testing procedures. Upon completion of the required curriculum, each person shall score a minimum of 75 percent on the written or oral test provided by the department and demonstrate safe handling of a firearm. Based on the results of the written or oral test and demonstrated firearm safe handling techniques as prescribed by the department, the volunteer instructor shall determine the persons who shall be issued a certificate of completion.

15.41(2) Special testing out provisions. Any person born after January 1, 1967, who does not complete the required ten-hour hunter safety and ethics course (as described in Iowa Code section 483A.27, subsection (1)), must meet the following requirements to be eligible to purchase an Iowa hunting license:

a. To comply with Iowa Code section 483A.27, subsection (5), an individual must pass a written examination compiled by the department of natural resources under the direct supervision of a state conservation officer or certified hunter safety instructor.

b. If the applicant does not pass the examination by a score of 95 percent or more, the applicant must then wait seven days to take the examination again.

c. If the applicant does not pass the second examination with a score of 95 percent or more, the applicant must successfully complete the ten-hour safety and ethics course to obtain a certificate of completion (as described in Iowa Code section 483A.27, subsection (2)).

15.41(3) Exemptions. The following groups of individuals do not need hunting licenses and therefore do not need to satisfactorily complete a hunter safety and ethics education course:

a. Landowners and tenants. Owners or tenants of land and their children when hunting on the land which they own or on which they are tenants.

b. Residents under 16. Residents of the state under 16 years of age accompanied by their

parent or guardian or in the company of any other competent adult if the adult accompanying said minor possesses a valid hunting license, providing, however, there is one licensed adult accompanying each person under 16 years of age.

15.41(4) Deer and wild turkey license applications. Individuals are not required to exhibit a certificate showing satisfactory completion of a hunter safety and ethics education course only when applying for a deer or wild turkey license.

571—15.42(321G,462A,483A) Volunteer bow and fur harvester education instructors, snowmobile and all-terrain vehicle (ATV) safety instructors, boating safety instructors and hunter education instructors.

15.42(1) Purpose. Pursuant to Iowa Code sections 321G.23(2), 462A.3 and 483A.27(4), the department will certify volunteer instructors to teach bow, fur harvester, snowmobile, ATV, boating and hunter education courses.

15.42(2) Definitions. For the purpose of this rule:

“Certified instructor” means a person who has met all criteria in this rule for one or more of the above-named courses.

“Course” means the department’s bow, fur harvester, snowmobile, ATV, boating and hunter education and ethics courses.

“Department” means the department of natural resources.

“Instructor applicant” means a person who has applied to become a certified volunteer instructor for one of the above-named courses.

15.42(3) Minimum qualifications. The following conditions must be satisfied before any person can become a certified instructor. Failure to meet these conditions will result in the denial of the application. An applicant may be disqualified if the applicant has accumulated any habitual offender points pursuant to rule 571—15.16(481A), or other license suspension by the court or department. The instructor applicant will be notified of the denial by the recreational safety coordinator. An instructor applicant shall:

a. Submit an application as provided by the department to the local conservation officer or recreational safety officer.

b. Be at least 18 years of age.

c. Have experience in handling equipment, such as firearms, bows and arrows, furbearer traps, snowmobiles, ATVs and various navigational vessels, that is necessary for the various prescribed courses.

d. Have completed the course as defined in subrule 15.42(2).

e. Attend and pass an instructor’s training and certification course administered by the department.

f. Submit to a background check. This check will include, but not be limited to, a criminal history check as provided by the department of public safety. A record of a felony conviction will disqualify the applicant. A record of serious or aggravated misdemeanors may disqualify the applicant based on type of offense and year committed.

g. Successfully complete the apprenticeship as required in subrule 15.42(4).

15.42(4) Instructor applicant apprenticeship. In addition to subrule 15.42(3), the following conditions must be satisfied to complete the instructor applicant apprenticeship:

a. Participate in one course.

b. Apprentice with a certified instructor.

The recreational safety officer may make the determination as to which certified instructor will be supervising the instructor applicant during the apprenticeship.

15.42(5) Certified education instructor responsibilities. A certified instructor has the following responsibilities:

- a. To complete all prerequisites to becoming an instructor as provided in subrules 15.42(3) and 15.42(4).
- b. To follow all policies and procedures as set forth in the current "Instructor Procedures Manual."
- c. To assist in the recruitment and training of additional volunteer instructors.
- d. To recruit and train students in the applied-for prescribed course program.
- e. To actively promote the program in the instructor's county and to arrange for publicity for each new class.
- f. To maintain order and discipline in the classroom and outdoor classroom at all times.
- g. To accurately fill out required forms and reports for each class and mail that material to the recreational safety coordinator within 15 days after completion of the course.
- h. To teach the course as prescribed by the department.
- i. To maintain a file on all students that the instructor teaches.
- j. To actively participate in one course every two years. If this requirement is not met, the instructor's certification may be terminated after notification by letter by the recreational safety coordinator. The person may reapply to become a volunteer safety education instructor pursuant to subrule 15.42(3).
- k. To attend a minimum of one continuing education instructor workshop every three years for hunter education as provided by the department.

15.42(6) Grounds for revocation of instructor certification. The department may, at any time, seek to revoke the instructor certification of any person who:

- a. Fails to meet the instructor responsibilities as outlined in subrules 15.42(4) and 15.42(5).
- b. Fails to follow the policies and procedures as set forth in the current "Instructor Procedures Manual."
- c. Falsifies any information as may be required by the department.
- d. Handles any equipment in an unsafe manner, or allows any student or other instructor to handle equipment in a reckless or unsafe manner.
- e. Is convicted of or forfeits bond for any fish and game, snowmobile, ATV or navigation violation of this state or any other state.
- f. Uses abusive or foul language while conducting a course.
- g. Participates in a course while under the influence of alcohol or any illegal drug.
- h. Has substantiated complaints filed against the instructor by the public, department personnel or other certified instructor(s).
- i. Fails to meet the requirements in subrule 15.42(5), paragraphs "j" and "k."
- j. Is convicted of a felony or an aggravated or serious misdemeanor as defined in the statutes of this state. This would also include any felonies or comparable misdemeanors of any other state.
- k. Receives compensation directly or indirectly from students for time spent preparing for or participating in a course.

15.42(7) Termination of certification. Any certified instructor has the right, at any time, to voluntarily terminate certification. If an instructor voluntarily terminates certification or certification is terminated by the department, the instructor must return to the department the certification card and all materials that were provided.

15.42(8) Compensation for instructors. Instructor applicants and certified instructors shall not receive any compensation for their time either directly or indirectly from students while preparing for or participating in a course. However, instructor applicants and certified instructors may require students to pay for actual course-related expenses involving facilities, meals or materials other than those provided by the department.

15.42(9) Hearing rights. If the department seeks to revoke an instructor certification pursuant to subrule 15.42(6), the department shall provide written notice of intent to revoke the certification as provided in 571—Chapter 7. If the certified instructor requests a hearing, it shall be conducted in accordance with 571—Chapter 7.

These rules are intended to implement Iowa Code chapters 321G, 456A, 462A, 481A, 481B, 482, 483A, 484A, and 484B.

Date

Richard A. Leopold, Director

(P:15n.doc/mg)

Moved – Commissioner Francisco

Seconded - Commissioner Rettig

Discussion –

Commissioner Bird expressed concern about internet access with smaller vendors and the cost involved of internet access to operate ELSI 2. Mark Warren stated that a survey in 2007 had been done and 83% of vendors already have access.

Moved to amend – Commissioner Rettig

Seconded – Commissioner Kramer

Attorney Kelley Myers to amended as follows:

To approve item #7 with the following changes: The inclusion of “creed, sexual orientation, gender identity, religion, pregnancy or public accommodation” in lieu of “race, creed, nationality or religion” in sub rule 15.6(5) “e”(7); the inclusion of the word “disposition” after “[u]pon receipt of the” at the beginning of subrule 15.16(2) “b”; and the replacement of the word “weekly” with the word “monthly” in the subrule 15.16(2) “b”.

Motion – Carried by Unanimous Vote with Amendments

8. Agreement with Louisa Soil and Water Conservation District

The Commission is requested to approve an amendment to an agreement among the Department and the Louisa Soil and Water Conservation District. The primary purpose of this amendment agreement is to extend the funding for person for an additional year to work with private landowners utilizing best management practices to restore and enhance wetlands through the use of programs such as the Wetland Reserve Program and the Emergency Watershed Program, and the Conservation Reserve Program along the Lower Cedar and Iowa Rivers in Louisa, Muscatine, Washington, Johnson, and Cedar Counties.

This area is identified as a priority area in the Iowa Wildlife Action Plan and is also the first designated Reptile and Amphibian Conservation Area. The Wildlife Bureau has worked with the Iowa Department of Agriculture and Lands Stewardship, Division of Soil Conservation to prioritize this area to fund a position.

The individual would not be an employee of the DNR but, instead, would be employed by the Louisa Soil and Water Conservation District and housed out of the Louisa USDA office.

The funding for the position will be 1/3 Wildlife Bureau (Trust Fund), 1/3 IDALS, and 1/3 NRCS (in-kind match of office space, vehicle, phones, secretarial support, internet, office supplies).

The total cost of the agreement to the DNR will be for \$33,000 (\$16,000 for the first year and \$17,000 for the second year – first year is already completed).

Moved – Commissioner Kircher
Seconded - Commissioner Drees
Discussion – Commissioner Drees asked for cost clarification. Kelly Smith from the Wildlife Bureau explained the total costs to the DNR would be \$33,000 for the two year period.
Commissioner Rettig asked how many agreements are outstanding. Kelly Smith responded approximately five.
Motion – Carried by Unanimous Vote

9. Agreement with Boone Soil and Water Conservation District

The Commission is requested to approve an agreement among the Department and the Boone Soil and Water Conservation District. The primary purpose of this agreement will be to fund a person to work with private landowners utilizing best management practices that improve water quality and wildlife habitat in the “impaired” Big Creek Lake watershed in Boone and Polk Counties. This agreement will further achieve the goals of the Iowa Department of Natural Resources Fisheries and Wildlife Bureau and 319 Program.

The Wildlife Bureau in partnership with the Fisheries Bureau successfully applied for a 319 grant, a federal award made available through the Environmental Protection Agency and the Environmental Services Division of the Department. This contract will enable the Department to put a person on the ground who will work with private landowners in the impaired Big Creek watershed.

The individual would not be an employee of the DNR but, instead, would be employed by the Boone Soil and Water Conservation District and housed out of the Boone USDA office.

The funding for the position will be ¼ Wildlife Bureau (Trust Fund), ¼ Lakes Restoration Fund (General Fund), ¼ 319 funding, and ¼ NRCS (in-kind match of office space, vehicle, phones, secretarial support, internet, office supplies).

The total cost of the agreement to the DNR will be for \$37,000.

Moved – Commissioner Francisco
Seconded - Commissioner Drees
Discussion – Commissioner Francisco stated that he thought these types of agreements are a good way to leverage money.
Motion – Carried by Unanimous Vote

10. Wildlife Habitat Promotion with Local Entities Program Grant Review

Natural Resource Commission approval is requested for the Wildlife Habitat grant recommendations described below. All revenues derived from the sale Wildlife Habitat Stamps, which are required by purchasers of hunting and trapping licenses, are used within the state of Iowa for wildlife habitat development and enhancement, according to Iowa Code section 483A.3. This development and enhancement is accomplished through acquisition of lands, leasing of lands, or obtaining easements from willing sellers for use as wildlife habitats and for the development and enhancement of wildlife lands and habitat areas.

The Wildlife Habitat Stamp Fund Program is administered by the DNR in compliance with Iowa Code section 483A.3 and 571 Iowa Administrative Code chapter 23. At least 50 percent of the Wildlife Habitat Stamp revenues are apportioned to local entities (county conservation boards) on a semiannual basis each year. The program provides grants of not more than 75 percent of the approved appraised value of the acquisition, lease or easement. The review committee met on January 16, 2009, to review a total of 20 county conservation board projects requesting \$2,196,284.38 in funds. A total of \$450,000.00 was available for distribution.

The committee recommends fully funding the top ranked project and using the remaining funds of \$18,000.00, along with any undistributed funds from previous grant cycles, to the next ranked projects. Undistributed funds may be available from cost savings on other projects and/or previous funds declined by county conservation boards. If the next ranked project declines the remaining funding, the Department requests authority to offer those funds to the next highest scored project until it exhausts the funds available.

Rank by Score	County	Project	Acres	Grant Request	Grant Awarded	Total Project Cost
1	Warren	Diehl Wetland Acquisition	542	432,000.00	\$432,002.00	\$816,000.00
2	Clinton	Ringneck Marsh Wildlife Area	160.85	62,900.00	\$18,000	\$175,000.00
3	Carroll	Carroll County Greenbelt Connection	156	124,000.00	\$0.00	\$172,000.00
4	Washington	Nolan Addition	167	83,000.00	\$0.00	\$111,900.00
5	Franklin	Smith Property	68	20,000.00	\$0.00	\$121,000.00
6	Sioux	Fairview Wildlife Complex, Ranschau	98	184,150.00	\$0.00	\$306,917.00
7	Kossuth	Schuffham Acquisition	127.88	\$115,072.00	\$0.00	\$193,400.00
8	Wright	McClenahan Wildlife Area	65	\$32,370.00	\$0.00	\$121,000.00
9	Hancock	Upper Grove Wildlife Area	79	\$78,999.00	\$0.00	\$150,000.00
10	Chickasaw	Kennedy Acquisition	71	\$51,750.00	\$0.00	\$69,000.00
11	Linn	Matsell Bridge Natural Area	79	\$245,362.00	\$0.00	\$327,150.00
12	Humboldt	Pioneer Prairie Pothole Wetland Complex	40	\$127,125.00	\$0.00	\$181,500.00
13	Page	Ross Bros Pheasants Forever Wildlife Area	55.42	\$63,000.00	\$0.00	\$104,294.00
14	Mitchell	Wapsi Greenbelt	59.43	\$130,500.00	\$0.00	\$181,000.00
15	Des Moines	Wasson Land Acquisition	52.45	\$88,509.38	\$0.00	\$118,012.50

Rank by Score	County	Project	Acres	Grant Request	Grant Awarded	Total Project Cost
16	Greene	Horseshoe Bend Addition	42.09	\$63,135.00	\$0.00	\$84,180.00
17	Jones	North Bluff Hill Prairie	34	\$69,500.00	\$0.00	\$116,700.00
18	Jones	Hale Wildlife Area	60	\$130,000.00	\$0.00	\$206,000.00
19	Lyon	Boersma Wildlife Area	62	\$61,612.00	\$0.00	\$168,400.00
20	Bremer	7-Bridges Wildlife Area	20	\$33,300.00	\$0.00	\$44,400.00

Moved – Commissioner Rettig
 Seconded - Commissioner Francisco
 Discussion – Commissioner Rettig thanked department for listing all 20 projects. Commissioner Drees asked if the \$450k available represented the total of stamp revenues. Kelly Smith responded that it only represented what was available for the grant program. Commissioner Rettig asked if all grants program information is available on the DNR website. Tammie Krausman with the Director’s Office explained that there is a ‘DNR Grants’ page and it is updated regularly.
 Motion – Carried by Unanimous Vote

11. Chapter 71 - Nursery Stock Sale to the Public: NOIA

The Commission’s approval is requested for publication of a Notice of Intended Action to amend Chapter 71, Nursery Stock Sale to the Public. This amendment allows:

1. The following changes in pricing structure:
 - Oak, hickory, walnut, pecan and basswood, 17" and larger—\$45 to \$55 per hundred plants
 - Other hardwood tree species, 17" and larger—\$42 to \$52 per hundred plants
 - Elderberry, buttonbush, dogwood, and Nanking cherry, 17" and larger—\$42 to \$52 per hundred plants
 - Other shrub species, 17" and larger—\$45 to \$55 per hundred plants.
 - Conifers, 17" and larger—\$30 to \$40 per hundred plants.
 - Prices for wildlife packets shall be \$90 to \$110 each
 - Include aspen in the 17" and larger category

A price increase is needed to cover increasing labor and production costs.

Attachment: Chapter 71 Rule Notice of Intended Action

NATURAL RESOURCE COMMISSION [571] Notice of Intended Action

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 71, “Nursery Stock Sale to the Public,” Iowa Administrative Code.

This rule provides the descriptions of plants made available through the State Nursery, the obligations of customers purchasing plants from the State Nursery, and the prices of such plants. The proposed amendments amend the prices of plants made available for sale under these rules. Any interested person may make written suggestions or comments on the proposed amendments on or March 31. Written comments may be sent to the Forestry Bureau Chief by mail or delivery: Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; by fax: (515)281-6794; or by email: paul.tauke@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Forestry Bureau at (515)281-5034 or at the Forestry Bureau offices on the fourth floor of the Wallace State Office Building. These rules are intended to implement Iowa Code sections 456A.20, 461A.2 and 1989 Iowa Acts, chapter 311, section 16.

The following amendments are proposed.

ITEM 1. Amend subrule 71.3(1) as follows:

71.3(1) Prices for hardwoods shall be as follows:

- a. ~~Aspen, Oak oak~~, hickory, walnut, pecan and basswood, 6” to 16” - \$40 per hundred plants.
- b. ~~Aspen, Oak oak~~, hickory, walnut, pecan and basswood, 17” and larger - ~~\$45~~ \$55 per hundred plants.
- c. Other hardwood tree species, 6” to 16” - \$37 per hundred plants.
- d. Other hardwood tree species, 17” and larger - ~~\$42~~ \$52 per hundred plants.

ITEM 2. Amend subrule 71.3(2) as follows:

71.3(2) Prices for shrubs shall be as follows:

- a. Elderberry, buttonbush, dogwood, and Nanking cherry, 6” to 16” - \$37 per hundred plants.
- b. Elderberry, buttonbush, dogwood, and Nanking cherry, 17” and larger - ~~\$42~~ \$52 per hundred plants.
- c. Other shrub species, 6” to 16” - \$40 per hundred plants.
- d. Other shrub species, 17” and larger - ~~\$45~~ \$55 per hundred plants.

ITEM 3. Amend subrule 71.3(3) as follows:

71.3(3) Prices for conifers shall be as follows:

- a. Conifers 6” to 16” - \$25 per hundred plants.
- b. Conifers 17” and larger - ~~\$30~~ \$40 per hundred plants.

ITEM 4. Amend subrule 71.3(4) as follows:

71.3(4) Prices for wildlife packets shall be ~~\$90~~ \$110 each.

ITEM 5. Amend subrule 71.3(5) as follows:

71.3(5) Prices for songbird packets shall be ~~\$20~~ \$25 each.

Date

Richard A. Leopold, Director

(P:71n/mg)

Moved – Commissioner Drees Seconded - Commissioner Francisco Discussion – Commissioner Rettig asked if this was part of the rule brought to the commission in

October 2008 now streamlined. Paul Tauke Forestry Bureau Chief explained the revised charges proposed. The previous item had an overall price increase request, this Notice of Intended Action (NOIA) price changes are based on stock size. Commissioner Rettig noted that the previous NOIA had been withdrawn last year and asked if this would be the only new NOIA the forestry bureau would be presenting to the commission for 2009. Paul Tauke stated that this would be the only one. He also noted that the forestry bureau has been working with the public that addressed opposition at the October 2008 NRC meeting and has written confirmation form that they are not opposed to this revised proposed change.

Motion – Carried by Unanimous Vote

12. Chapter 13 - Permits and Easements for Construction and Other Activities on Public Lands and Waters: Adopted and Final

The Commission is requested to approve the attached Adopted and Final Chapter 13, “Permits and Easements for Construction and Other Activities on Public Lands and Waters.” Chapter 13 regulates construction activities that occur on state owned and managed lands and waters pursuant to the authority described by Iowa Code section 461A.4.

The proposed amendment rescinds the existing chapter and adopts a new one. The new rules clarify the process that the Department of Natural Resources will utilize in evaluating applications for construction permits, easements and leases; describe standards and criteria that must be met to receive a construction permit, easement or lease; establish definitions of sovereign waters; define inspection procedures; impose civil penalties, as allowed by the Iowa Code, for failure to comply with the rules; and amend the appeals process for applications that are denied according to the standards and criteria.

A Notice of Intended Action was published in the Iowa Administrative Bulletin on December 17, 2008 as ARC 7416B. Comments were accepted through January 9, 2009. In addition, the Department held a public hearing utilizing the Iowa Communications Network (ICN) at seven locations throughout the state. The Department received nine comments, all supporting the rule change and one seeking clarification about the impacts to existing permits.

Other than a few grammatical and word changes made with the Administrative Code Editor, some minor changes were made from the Notice of Intended Action based on additional Department review. First, the Department clarified that management practices conducted by the state on its owned and managed lands are not subject to the restrictions described in this rule. Second, the Department added Pickeral Lake to Clay County under the definition of “meandered sovereign lakes,” as Pickeral Lake spans both Buena Vista and Clay counties. Third, the Department modified the relief available to unsuccessful applicants, which conforms with Iowa Code chapter 17A. Finally, the Department removed an ambiguous clause in the penalty section.

Attachment: Adopted and Final: Chapter 13, Permits and Easements for Construction and Other Activities on Public Lands and Waters

NATURAL RESOURCE COMMISSION [571]

Adopted and Final

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 13, “Permits and Easements for Construction and Other Activities on Public Lands and Waters,” and adopt new Chapter 13, “Permits and Easements for Construction and Related Activities on Public Lands and Waters,” Iowa Administrative Code.

The proposed amendment rescinds the existing chapter and adopts a new one. The new rules clarify the process that the Department of Natural Resources will utilize in evaluating applications for construction permits, easements and leases; describe standards and criteria that must be met to receive a construction permit, easement or lease; establish definitions of sovereign waters; define inspection procedures; impose civil penalties, as allowed by the Iowa Code, for failure to comply with the rules; and amend the appeals process for applications that are denied according to the standards and criteria.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 17, 2008, as ARC 7416B. Comments were accepted through January 9, 2009. In addition, the Department held a public hearing utilizing the Iowa Communications Network (ICN) at seven locations throughout the State. The Department received nine comments, all supporting the rule change and one seeking clarification about the impacts to existing permits.

Other than a few grammatical changes, some minor changes were made from the Notice of Intended Action based on additional Department review. First, the Department clarified that management practices conducted by the State on its owned and managed lands are not subject to the restrictions described in this rule. Second, the Department added Pickeral Lake to Clay County under the definition of “meandered sovereign lakes,” as Pickeral Lake spans both Buena Vista and Clay counties. Third, the Department modified the relief available to unsuccessful applicants, which conforms with Iowa Code chapter 17A. Finally, the Department removed an ambiguous clause in the penalty section.

This amendment is intended to implement Iowa Code sections 461A.4, 461A.5A, 461A.5B, 461A.6, 461A.18, 461A.25 and 462A.3.

The following amendment is adopted.

Rescind 571—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13

PERMITS AND EASEMENTS FOR CONSTRUCTION AND RELATED ACTIVITIES ON PUBLIC LANDS AND WATERS

571—13.1(455A,461A,462A) Purpose. The commission holds lands and waters under its jurisdiction in public trust and protects the interests of all citizens in these lands and waters. These rules establish procedures and regulate the evaluation and issuance of permits for construction or other related activities that alter the physical characteristics of public lands and waters under the jurisdiction of the commission, including those activities that occur over or under such lands and waters. However, these rules shall not apply to activities accomplished by the Department and its agents that would only temporarily alter the characteristics of public land and would be considered management practices.

These rules also establish procedures for issuance of easements to public utilities and political subdivisions for activities that are determined to have a permanent effect on use and enjoyment of public lands and waters under the jurisdiction of the commission.

571—13.2(455A,461A,462A) Affected lands and waters. These rules are applicable to all fee title lands and waters, dedicated lands and waters under the jurisdiction of the commission and managed by the commission for public access to a meandered sovereign lake or meandered sovereign river; meandered sovereign lakes; meandered sovereign rivers; and sovereign islands; except those portions of the Iowa River and the Mississippi River where title has been conveyed to charter cities.

571—13.3(455A,461A) Definitions. For the purposes of this chapter, the following definitions shall apply:

“Applicant” means the person who applies for a permit or easement pursuant to these rules.

“Authorized agent” means a person, designated by the applicant, who shall be responsible to perform part or all of the proposed activity and who certifies the application according to subrule 13.9(2).

“Canal” means a narrow strip of water, artificially made, between two water bodies described in rule 571—13.2(455A,461A,462A).

“Cantilever access structure” means a structure constructed for improving the proximity of access to a lake or river, that has a support footing located entirely on littoral or riparian land above the ordinary high water line, and that extends from the footing and is completely suspended above the water at normal water elevation with no occupation of the lakebed or riverbed.

“Channel” means a narrow body of water that may be natural or artificially made.

“Charter cities” means the city of Wapello operating under special charter enacted in 1856; the city of Camanche operating under special charter enacted in 1857; the city of Davenport by chapter 84, Acts of the 47th General Assembly; the cities of Burlington, Clinton, Dubuque, Fort Madison, Keokuk, and Muscatine by chapter 249, Acts of the 51st General Assembly; and the city of Le Claire by chapter 383, Acts of the 58th General Assembly.

“Commercial boat ramp” means a boat ramp installed or maintained as part of a business to provide access to a public water body where use of the ramp is available to the general public.

“Commission” means the natural resource commission.

“Department” means the department of natural resources.

“Director” means the director of the department of natural resources or the director's designee.

“Easement” means an easement authorized under Iowa Code section 461A.25.

“Fee title lands and waters” means lands and waters for which title is acquired by deed or testamentary devise.

“Lease” means a lease authorized under Iowa Code section 461A.25.

“Littoral land” means land abutting a lake.

“Meandered sovereign lakes” means those lakes which, at the time of the original federal government surveys, were surveyed as navigable and important water bodies and were transferred to the states upon their admission to the union to be transferred or retained by the public in accordance with the laws of the respective states. The state of Iowa holds sovereign title in trust for the benefit of the public to the beds of the following lakes:

<u>County</u>	<u>Lake</u>
Allamakee	Kains
	Lansing Big Lake
	Mud Hen
	New Albin Big Lake

Buena Vista	Pickeral
	Storm
Calhoun	North Twin
	South Twin
	Tow Head
Cerro Gordo	Clear
Clay	Dan Green Slough
	Elk
	Mud
	Pickeral
	Round
	Trumbull
Delaware	Silver
Dickinson	Center
	Diamond
	East Okoboji
	Hottes
	Jemmerson Slough
	Little Spirit
	Lower Gar
	Marble
	Minnewashta
	Pleasant
	Prairie
	Silver
	Spirit
	Swan
	Upper Gar
	Welch
	West Okoboji
Emmet	Birge
	Cheerers
	East Swan
	Four Mile

	Grass
	High
	Ingham
	Iowa
	Ryan
	Tuttle
	Twelve Mile
	West Swan
Greene	Goose
Hamilton	Little Wall
Hancock	Crystal
	Eagle
	East Twin
	West Twin
Harrison	Nobles
Johnson	Swan
Kossuth	Burt
	Goose
Monona	Blue
Osceola	Iowa
	Rush
Palo Alto	Five Island
	Lost Island
	Rush
	Silver
	Virgin
Pocahontas	Clear
	Lizard
Pottawattamie	Carter
	Manawa
Sac	Black Hawk
Winnebago	Harmon
	Rice
Woodbury	Browns

Worth	Silver
Wright	Big Wall
	Cornelia
	Elm
	Morse

“Meandered sovereign rivers” means those rivers which, at the time of the original federal government surveys, were surveyed as navigable and important water bodies and were transferred to the states upon their admission to the union to be transferred or retained by the public in accordance with the laws of the respective states upon their admission to the union. The state of Iowa holds sovereign title in trust for the benefit of the public to the beds of the following rivers:

River and description

The Mississippi River from the south boundary of the state of Minnesota to the north boundary of the state of Missouri.

The Missouri River from the south boundary of the state of South Dakota to the north boundary of the state of Missouri.

The Big Sioux River from the south boundary of the state of Minnesota to the south boundary of the state of South Dakota.

The Des Moines River from the Mississippi River to the west line of Section 7, Township 89 North, Range 32 West, Palo Alto County (west branch) and to the north line of Section 2, Township 95 North, Range 29 North, Kossuth County (east branch).

The Cedar River from the Iowa River to the west line of Section 7, Township 89 North, Range 13 West, Black Hawk County.

The Iowa River from the Mississippi River to the west line of Section 7, Township 81 North, Range 11 West, Iowa County.

The Little Maquoketa River from the Mississippi River to the west line of Section 35, Township 90 North, Range 2 East, Dubuque County.

The Maquoketa River from the Mississippi River to the west line of Section 18, Township 84 North, Range 3 East, Jackson County.

The Nishnabotna River from the north boundary of the state of Missouri to the north line of Section 1, Township 67 North, Range 42 West, Fremont County.

The Raccoon River from the Des Moines River to the west line of Section 30, Township 78 North, Range 25 West, Polk County.

The Skunk River from the Mississippi River to the north line of Section 1, Township 73 North, Range 8 West, Jefferson County.

The Turkey River from the Mississippi River to the west line of Section 30, Township 95 North, Range 7 West, Fayette County.

The Upper Iowa River from the Mississippi River to the west line of Section 28, Township 100 North, Range 4 West, Allamakee County.

The Wapsipinicon River from the Mississippi River to the west line of Section 19, Township 86 North, Range 6 West, Linn County.

“Native stone riprap” means broken stone, dolomite, quartzite or field stone meeting Iowa department of transportation specification 4130, Class D.

“Ordinary high water line” means the boundary between meandered sovereign lakes and rivers, except the Mississippi River, and littoral or riparian property. “Ordinary high water line” is the limit where high water occupies the land so long and continuously as to wrest terrestrial vegetation from the soil or saturate the root zone and destroy its value for agricultural purposes. “Ordinary high water line” is the boundary between upland and wetland as defined by the U.S. Army Corps of Engineers Wetlands Delineation Manual dated January 1987. For Storm Lake and Clear Lake in Cerro Gordo County, the elevation has been established by adjudication. A list of elevations for the ordinary high water lines of meandered sovereign lakes, as determined by this definition and applicable court cases, is available on the department’s Web site.

“Ordinary high water line of the Mississippi River” means the elevation, as defined by criteria in the Code of Federal Regulations, 33 CFR Part 328.3 (November 13, 1986), promulgated by the U.S. Army Corps of Engineers, where the water exists at or below such elevation 75 percent of the time as shown by water stage records since construction of the locks and dams in the river.

“Permit” means a sovereign lands construction permit issued pursuant to this chapter.

“Permittee” means a person who receives a permit pursuant to these rules, which may also include the authorized agent if designated pursuant to these rules.

“Person” means the same as defined in Iowa Code section 4.1.

“Public boat ramp” means a boat ramp constructed to provide public access from public land to a water body.

“Public lands” means land under the jurisdiction of the commission that is owned by the state or that has been dedicated for public access to a meandered sovereign lake or meandered sovereign river.

“Public waters” means a water body under the jurisdiction of the commission that is owned by the state or that has been dedicated for public access to a meandered sovereign lake or meandered sovereign river.

“Riparian land” means land abutting a river.

“Sovereign island” means an island located within a sovereign meandered lake or a sovereign meandered river that was transferred to the state upon its admission to the union and whose title continues to be retained by the state.

“Standard riprap” means broken stone, dolomite, quartzite, field stone, or broken concrete meeting Iowa department of transportation specification 4130, Class D. Broken concrete shall not have reinforcing materials protruding from the surface of the riprap. Standard riprap shall not include petroleum-based materials.

DIVISION I PERMITS

571—13.4(455A,461A) Permits required.

13.4(1) General. No person shall temporarily or permanently place or build any structure or

alter the characteristics of public lands or waters under the jurisdiction of or managed by the commission without a permit issued by the department prior to commencement of such activities as provided in the rules of this chapter.

13.4(2) Hazardous conditions. Trees, rock, brush or other natural materials located on sovereign or dedicated lands may be removed by persons without a permit issued pursuant to these rules only after the department, in its sole discretion, determines and evidences in writing that a hazard or other detrimental condition exists and that the proposed mitigative activity is appropriate. Such activity shall be limited only to the work required to address the immediate hazard or other detrimental condition. Any removal allowed by this rule shall conform to the requirements enumerated by the department regarding such removal, or the removal shall be deemed unauthorized action resulting in damage to state lands and waters. Persons proposing to remove hazards must contact a local department official and request an exception to a permit. The department official shall inspect the hazard and provide written authorization to proceed or shall require the person to apply for a permit.

13.4(3) Impoundments. These rules do not apply to river impoundments regulated by Iowa Code chapter 462A.

13.4(4) Docks. These rules do not apply to docks regulated by 571—Chapter 16, except as specifically described herein.

571—13.5(455A,461A) Interest in real estate. A permit shall be construed to do no more than give the permit holder a license to alter an area as specifically set forth in the permit. The permit creates no interest, personal or real, in the real estate covered by the permit.

571—13.6(455A,461A,462A) Evaluation.

13.6(1) In considering complete applications, the department shall evaluate the impact of the proposed activities on public use and enjoyment of public lands or waters, on the natural resources in the areas within and surrounding the proposed activities, and the department's present and future intended management for the area against the applicant's identified and reasonable need to undertake the proposed activities and the viable alternatives that may exist with respect to the proposed activities.

13.6(2) In no event shall the department issue a permit for activities that:

a. May result in the taking, possession, transport, import, export, processing, selling, buying, transporting, or receiving any species of fish, plants or wildlife appearing on lists referenced in Iowa Code section 481B.5, unless the permittee meets one of the exemptions enumerated in rule 571—77.4(481B).

b. Have not received flood plain permits pursuant to Iowa Code chapter 455B and 567—Chapters 70 through 76, if applicable.

c. May impact littoral or riparian property owners without the express written permission of the littoral or riparian property owner.

d. Do not comply with the standards defined in 571—13.7(455A,461A,462A).

e. Interfere with department obligations or limitations related to federal funds or agreements or other restrictive covenants that may be applicable to the affected area.

f. Allow fill to be placed beyond the ordinary high water line of waters described in rule 571—13.2(455A,461A,462A) for purposes of regaining land lost due to erosion.

13.6(3) The department may withhold a permit when the applicant has not obtained all other required permits or licenses necessary to construct and operate the proposed activity.

571—13.7(455A,461A,462A) Review standards. Department staff shall conduct an environmental review of the application. The following standards shall apply to permits issued under the rules of this chapter:

13.7(1) *Uses of lands and waters.* Development of public lands and public waters permitted by these rules shall be limited to projects that meet all of the following criteria. The projects:

a. Are built to minimally impact the natural resources of public recreational use and navigation on such lands and waters. Specifically, applicants must demonstrate that the project accomplishes all of the following:

- (1) Does not negatively impact water quality in or around the proposed permitted area.
- (2) Minimizes erosion and sedimentation in or around the proposed area.
- (3) Minimizes detrimental impacts to biological and botanical resources in or around the proposed area, including upland, wetland and sensitive areas and unique community structures.
- (4) Complies with laws and regulations related to threatened and endangered species, through both federal and state programs.

b. Utilize the smallest amount of public lands and public waters.

c. Do not convert the public lands and public waters to an exclusive or private use.

d. Are the only viable method for conducting the activities, and no viable alternatives to constructing on public lands exist.

In completing the environmental review, different bureaus and staff members of the department will provide input based on law, professional judgment, data and accepted scientific theory.

13.7(2) *Shoreline erosion protection and retaining walls.* Shoreline erosion protection activities may be permitted if the activities are in compliance with 571—13.6(455A,461A,462A) and the following additional standards:

a. Shoreline erosion protection activities on meandered sovereign lakes shall be limited to placement of native stone riprap, extending to a maximum of 4 feet horizontally within or below the ordinary high water line elevation contour line. Placement of earth fill within the ordinary high water line shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall be placed at or above the ordinary high water line. When such retaining structures are placed at the ordinary high water line, they must be faced with native stone riprap.

b. Shoreline erosion protection activities on meandered sovereign rivers, except the Mississippi River, shall be limited to placement of approved in-stream erosion control structures or native stone or standard riprap. Riprap shall extend riverward from the ordinary high water line at a slope of 2 feet horizontal to 1 foot vertical (2:1). Placement of earth fill within the ordinary high water line shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall not be placed within the ordinary high water line. When such retaining structures are placed at the ordinary high water line, they must be faced with riprap.

c. Shoreline erosion protection activities on the Mississippi River shall be limited to placement of approved in-stream erosion control structures or native stone riprap. Riprap shall extend riverward from the ordinary high water line at a slope of 2 feet horizontal to 1 foot vertical (2:1). Placement of earth fill within the ordinary high water line shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall not be placed within the ordinary high water line. When such retaining structures are placed at the ordinary high water line, they must be faced with native stone riprap.

d. Retaining walls on all meandered sovereign lakes and meandered sovereign rivers. The landowner shall maintain the wall system at all times and take corrective measures to eliminate any nuisance condition, repair deterioration of the structure, eliminate erosion around the structure, and repair damage to the structure caused by the action of the water or ice. When a retaining wall or other structure placed on the shoreline prevents the public from traversing the

shoreline, the landowner shall grant the public a license to walk from the landowner's property within 15 feet of the top of the wall or structure for the purpose of traversing the shoreline.

e. Notwithstanding the prohibitions in this subrule, nothing in this subrule shall prohibit activities that would be part of habitat development or natural resources mitigation projects constructed or approved by a political subdivision of the state and subject to review under these rules.

13.7(3) *Quality of the applicant.* Applicants or authorized agents who have a current violation for another project are not eligible for consideration for a permit under these rules unless and until all other noncompliant projects have been remediated and any enforcement actions related to the same have been resolved or satisfied.

13.7(4) *Cantilever access structures.* Permanent cantilever access structures that lawfully exist and are lawfully permitted under prior sovereign lands construction permit rules as of [insert the effective date of these rules] shall be deemed lawfully permitted under these rules. All cantilever access structures that are not lawfully installed prior to [insert the effective date of these rules] or are installed after [insert the effective date of these rules] shall be regulated as docks by 571—Chapter 16.

13.7(5) *Beaches, canals and channels.* Permits may be granted to maintain existing beaches, canals and channels lawfully installed as of [insert the effective date of these rules] to ensure the navigation and safety of those existing lawful beaches, canals and channels. The department shall not permit new beaches, canals or artificial channels or expansion of existing beaches, canals or artificial channels, except that the department may permit new beaches, canals and artificial channels and expansions of existing beaches, canals, and artificial channels when such establishment or expansion would be under the jurisdiction of a political subdivision of the state, would be accomplished to provide public access to the water, and would meet the review standards established by these rules.

13.7(6) *Stationary blinds.* All stationary blinds installed on lands and waters described in rule 571—13.2(455A,461A,462A) are subject to regulation by rule 571—51.6(481A) and are not subject to the requirements of these rules.

571—13.8(455A,461A) Leases or easements as a condition of permits. If a permitted structure or its use will have a continuing impact on the availability or desirability of public lands or public waters, the permit shall be conditioned on the requirement that the permittee obtain a lease or easement under Division II of this chapter. However, a lease or easement shall not be required for proposed activities that are wholly within the scope of the permittee's littoral or riparian rights.

571—13.9(455A,461A,462A) Permit application. Applicants shall apply for permits using an application form provided by the department. Applicants shall state the need for the proposed construction or use, the availability of alternatives, and the measures proposed to prevent, minimize or mitigate adverse impacts to natural resources or public use of the affected area. The department reserves the right to refuse to review incomplete applications. Each application, including all amendments, shall be signed by the applicant and authorized agent if one shall be so appointed by the applicant. The applicant's signature shall acknowledge that the application is accurate and made in good faith.

13.9(1) For purposes of this rule, the department will deem an application complete if the application meets all of the following criteria. The application:

- a.* Is provided on the department's form, and all fields are completed and legible;
- b.* Includes the name(s), mailing address and telephone number of the applicant(s) and

authorized agent(s), if applicable;

c. Describes the proposed activity, including:

(1) Physical address and legal description of the location where the proposed activity is to occur; a written description of existing natural and man-made structures and features; an aerial photograph, if possible or available; and a ground-level photograph(s) showing the area where the activity is proposed to occur;

(2) Schematic or design plans, including cross-sections and plan views, that accurately and clearly depict the proposed activities;

(3) Description of the construction methods used to complete the project, the methods used to transport material to the site, and the type and amount of material to be used;

(4) Description of measures proposed to prevent or minimize adverse impacts on the property in the proposed area;

(5) Description of any borrows or disposal sites, including the location of any borrows or disposal sites and the type and amount of material to be borrowed or disposed of in them;

d. Includes identification of the ordinary high water line, if the proposed activities are in or near a meandered sovereign lake or meandered sovereign river;

e. Describes alternative plans to undertake the activity that may be available to the applicant;

f. Identifies the need for the proposed activity in the proposed project area;

g. Provides a statement of consent for the department to enter the property during the term of the proposed permit.

13.9(2) For applications that provide for an authorized agent to perform part or all of the proposed activities, the following additional information shall be required to constitute a complete application:

a. Statement signed by authorized agent and applicant;

b. Statement signed by the authorized agent acknowledging that the authorized agent is aware of such designation and is responsible to complete the identified work; and

c. Description of the work to be completed by the authorized agent.

571—13.10(455A,461A) Additional information or analysis required for permit review.

13.10(1) The director may require applicants to provide additional information, at the applicant's sole cost, necessary to complete review of the application, including but not limited to study of alternatives to construction on public lands and waters, social and environmental impacts of the proposed activities, professional surveys to establish the social and environmental impacts of the proposed activities, professional land surveys to delineate or show real property boundaries and other characteristics, and a professional real estate appraisal of the value that a permit may convey.

13.10(2) If the applicant does not respond to a request for additional information within 90 days of such request being made by the department, the department may withdraw the application from consideration and the applicant must reapply for the permit.

13.10(3) When the director determines that the proposed activity will significantly affect the public interest, the director may hold a public meeting in the vicinity of the proposed activity. When a public meeting is held, the director shall consider public input in conjunction with other information collected or provided as part of the application review when acting on a permit application.

571—13.11(455A,461A) Permit issued or denied. The department shall promptly review all permit applications, and the director shall issue a permit or deny all or part of an application upon completion of review. A permit may include specified conditions denying the application in

part and the reasons for the conditions. The denial of a permit may include a proposed removal order. A permit denial shall be the final agency action, unless the unsuccessful applicant otherwise has a constitutional right to a contested case, in which case an administrative appeal pursuant to procedures in 571 – Chapter 11 shall be available. The unsuccessful applicant's request for a contested case may include a request for a variance or waiver under the provisions of Iowa Code section 17A.9A and 571—Chapter 11. The decision of the presiding officer in a contested case shall constitute final agency action.

571—13.12(455A,461A) Authorized agent. When an authorized agent is designated on the application for a permit and acknowledges the same, that authorized agent shall be responsible in the same manner as the permittee to comply with the terms of the permit issued.

571—13.13(455A,461A) Inspection. The department may inspect the location during the term of the permit to ensure the permitted activities comply with the terms of the permit. The permittee shall grant the department the right to access the permitted activities for purposes of inspecting the permitted activities during the term of the permit. If the permittee denies permission for entry, the department may obtain an order from the Iowa district court for the county in which the permitted activities or the majority of the permitted activities occur, as needed to enable the department to carry out its inspection duty. The intent of the inspection is to evaluate compliance with permit conditions and the impact to the natural resources and the public's recreational use of the area.

571—13.14(455A,461A) Additional information or analysis required during term of the permit. The director may require permittees to provide additional information, at the permittee's sole cost, necessary to ensure that the permittee is complying with the terms of the permit, including but not limited to social and environmental impacts of the activities, professional surveys to establish the social and environmental impacts of the activities, professional land surveys to delineate or show real property boundaries and other characteristics, and a professional real estate appraisal of the value that a permit may convey or has conveyed.

571—13.15(455A,461A) Unauthorized construction; citation; notice; proposed removal order.

13.15(1) Violations.

a. A person shall be in violation of these rules and Iowa Code section 461A.4 in the event the person does any of the following:

(1) Performs construction on or undertakes other activities that alter the physical characteristics of public lands or waters under the jurisdiction of or managed by the commission without a permit required by these rules;

(2) Performs such work out of conformance with specific requirements enumerated in a permit issued in accordance with these rules; or

(3) Fails to comply with an order of the commission under these rules.

b. Each day of a violation shall be considered a separate offense.

13.15(2) Types of enforcement actions. A person who violates these rules shall be subject to either of the following:

a. *Criminal enforcement.* A peace officer of the state may issue a citation for each offense. A person who is found guilty of violating these rules shall be charged with a simple misdemeanor for each violation.

b. *Civil enforcement.* A civil penalty may be assessed in conformance with Iowa Code

section 461A.5B and rule 571—13.17(455A,461A). Written notice of the violation(s) shall be given to the person against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. If agreement as to appropriate disciplinary sanction, if any, can be reached between the person against whom disciplinary action is being considered and the director, a written stipulation and settlement between the department and the person shall be entered. Such a settlement shall take into account how the corrective actions described in subrule 13.15(3) shall be accomplished. In addition, the stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the person, and the reasons for the particular sanctions imposed. If an agreement as to appropriate disciplinary action, if any, cannot be reached, the director may issue an administrative order as described in rule 571—13.17(455A,461A).

13.15(3) *Actions to be taken upon receipt of citation or notice of violation.* A person who has violated these rules shall cease the specified unauthorized activity upon receipt of a citation or as may be stipulated in the notice of violation. The notice of violation or a written notice accompanying the citation from the department shall require the person to take one or more of the following actions within a specified time:

a. Apply for a permit to authorize completion of construction or maintenance and use, as applicable;

b. Remove materials and restore the affected area to the condition that existed before commencement of the unauthorized activity;

c. Remediate the affected area in a manner and according to a plan approved by the department. The department may enforce such a remediation at the expense of the permittee, adjacent landowner or culpable party.

571—13.16(455A,461A) Removal orders. If the violation includes the unauthorized placement of materials or personal property on the public lands or public waters under the jurisdiction of the commission and the person, who may include a permittee or authorized agent but may not, fails to comply with the action required by the notice, the director may cause a proposed removal order to be issued to the person responsible for such placement. The proposed removal order shall specify the removal action required and include notice of the right to an administrative appeal including a contested case hearing under procedures in 571—Chapter 7. The proposed decision in a contested case may be appealed to the commission under 571—Chapter 7. If there is no appeal from a proposed decision that includes a removal requirement, the proposed decision shall be presented to the director for review and adoption. A removal order approved by the director shall constitute final agency action under Iowa Code sections 461A.4 and 461A.5A and may be enforced through an original action in equity filed in a district court of the state by the attorney general on behalf of the department and the commission.

571—13.17(455A,461A) Civil penalties. The department may assess a civil penalty of up to \$5,000 per offense for each violation of these rules, provided the department does not utilize a criminal citation for a violation. Each day the violation continues shall be a separate offense or violation. Penalties shall be assessed through issuance of an administrative order of the director which recites the facts and the legal requirements that have been violated and a general rationale for the prescribed fines. The order also may be combined with any other order authorized by statute for mandatory or prohibitory injunctive conditions and is subject to normal contested case and appellate review under procedures in 571—Chapter 7. The proposed decision in a contested case may be appealed to the commission under 571—Chapter 7. The commission may refer orders that include singular or cumulative penalties over \$10,000 to the attorney general's office.

571—13.18(455A,461A) Report of completion. Once an approved activity is completed, the permittee shall notify the department contact person identified in the permit of such completion through regular mail or E-mail. The permittee shall include with such notice a ground-level photograph(s) of the completed project. The activity shall be subject to final approval before the department determines that the conditions of the permit have been met.

571—13.19(455A,461A) Final inspection. Once the permittee notifies the department pursuant to rule 571—13.18(455A,461A), the department shall inspect the permitted area to ensure that the permittee has complied with the terms of the permit. Such inspection shall occur within 60 days of the department's receipt of the notice provided pursuant to rule 571—13.18(455A,461A). In the event the department does not provide final inspection within 60 days of the department's receipt of the notice provided pursuant to rule 571—13.18(455A,461A), the permittee shall be deemed compliant and the permit shall expire. The intent of this inspection is to evaluate compliance with permit conditions and the impacts to the natural resources and the public's recreational use of the area.

571—13.20(455A,461A) Permit extensions. Prior to the expiration of a permit, a permittee or an authorized agent may submit an application to the department for an extension of the permit on a form provided by the department. In evaluating whether to grant the extension, the department will consider the work completed, the work to be performed, the extent to which the permit extension is needed and the extent to which the permittee has made efforts to meet the obligations of the original permit. The department reserves the right to modify the conditions of a permit as part of any extension. An extension granted by this rule is not a project modification.

571—13.21(455A,461A) Project modifications. If projects are modified to the extent that the additional or modified work would not be allowed within the original permit, the permittee must apply for a new permit for the additional or modified work.

571—13.22(455A,461A) Transferability. Permits are transferable only upon written approval of the department and only after the department is satisfied that the permitted activities will not change and the new permittee would be eligible to receive a permit under subrule 13.7(3).

571—13.23 to 13.50 Reserved.

DIVISION II LEASES AND EASEMENTS

571—13.51(455A,461A) Leases. Where a permitted structure or related activity will have a continuing impact on the availability or desirability of public lands or public waters or exceeds the scope of littoral or riparian rights, the permittee must enter into a lease covering the area affected by the construction. Fees for leases shall be determined by 571—Chapter 18 or other methods approved by the commission and executed pursuant to Iowa Code section 461A.25. Requests for leases shall be made on the form and shall include the information required by rule 571—13.9(455A,461A,462A) under Division I of this chapter. The department may grant a lease if, in the department's sole discretion, the lease will not impair the state's intended use of the area during the term of the lease; the lease will not negatively impact a federal interest, including related deed restrictions, related to the area during the term of the lease; and the lease will not result in an exclusive use.

571—13.52(455A,461A) Easements. The director may grant an easement to political subdivisions and utility companies pursuant to Iowa Code section 461A.25, provided the following terms are met:

13.52(1) Requests for easements shall be made on the form and shall include the information required by rule 571—13.9(455A,461A,462A) under Division I of this chapter. The department may grant an easement if, in the department's sole discretion, the easement will not impair the state's intended use of the area during the term of the easement or the easement will not negatively impact a federal interest, including related deed restrictions, related to the area during the term of the agreement.

13.52(2) The value of an easement shall be determined by the director based upon a real estate appraisal or other method approved by the commission, as evidenced in the meeting minutes thereof. In addition to fees for easements, the director may assess the applicant for the reasonable transaction costs associated with the issuing of an easement including the cost of appraisals, other methods of establishing values, and land surveys. In determining the fee for an easement, the department may consider the value the proposed activity may contribute to the department's management of the affected property.

13.52(3) Recipients of any easements granted pursuant to this rule shall assume liability for structures installed pursuant to such easement and shall comply with the standards enumerated in rule 571—13.7(455A,461A,462A), as applicable, in the sole discretion of the department.

571—13.53(455A,461A) Appeals. The department and the commission are under no legal obligation to provide any person a legal interest in property under the jurisdiction of the commission. An applicant may appeal to the director a decision of the department regarding leases and easements and request that the director reconsider a condition of an easement or a lease or a denial of an easement or a lease. The determination of the director shall be final agency action.

These rules are intended to implement Iowa Code sections 455A.5, 461A.4, 461A.5A, 461A.5B, 461A.6, 461A.18, 461A.25 and 462A.3.

Date

Richard A. Leopold, Director

(P:13f.doc/mg)

Moved – Commissioner Drees

Seconded - Commissioner Garst

Discussion – Attorney Kelley Myers stated that the rule would enable the DNR to evaluate the type of trail, placement of trail, and compatibility to surrounding area of a proposed trail before implementation.

Attorney Kelley Myers to amended as follows:

To approve item #12 with the following changes: The replacement of “11” with “7” in the first reference to 571 chapter 11 in rule 13.11; and reword the end of the first sentence of subrule 13.7(2) “a” by having the wording read “the elevation contour line of the ordinary high water line.”

Motion – Carried by Unanimous Vote with Amendments

13. Fish Habitat Promotion with Local Entities Program Grant Review

Natural Resource Commission approval is requested for the Fish Habitat Promotion Grant recommendations included below. The Fish Habitat Promotion grant program provides up to 90% of total project costs to county conservation boards for the development of fish habitat or acquisition of land to be used for fish habitat development purposes. This program is funded through fish habitat fees, which are paid for as part of fishing licenses and deposited in the state's Fish and Game Protection Fund.

In compliance with 571 Iowa Administrative Code chapter 35, at least fifty percent of all revenues collected as described above are distributed equally among six districts to provide funding to county conservation boards. Each district may hold its apportionment for two years; otherwise, any unobligated money is reverted back to the Fish and Game Protection Fund and redistributed equally among all districts.

The Fish Habitat Grant Review Committees, comprised of at least five county conservation board directors, met in December 2008 and January 2009 to review applications and score all of the projects in their district. A DNR district fisheries biologist was present and available, as required by the rule to provide advice, to each committee.

The committee recommends funding the projects as follows:

District 1 committee recommends funding the following two (2) ranked projects.

Tama County	\$33,120.00	Silt Pond/Fishing Pond – Hansen Addition to Otter Creek Lake & Park
Webster County	\$9,765.00	Bank Armoring – Badger Lake/J.F. Kennedy Park

District I Total \$42,885.00

District II committee recommends funding the following seven (7) projects.

Mitchell County	\$16,717.50	Turtle Creek Trout Stream
Howard County	\$31,500.00	Vernon Springs Dam Fish Passage Structure
Butler County	\$13,057.72	Camp Comfort Riverbank Stabilization
Floyd County	\$13,050.00	Idlewild Access Boat Ramp & Bank Stabilization
Chickasaw County	\$22,140.00	Ringneck Haven Shoreline Armoring
Howard County	\$18,849.15	Lake Hendricks Fish Habitat & Bank Stabilization
Franklin County	\$20,880.00	Maynes Creek Bank Armoring

District II Total \$136,194.37

District III committee recommends funding the following two (2) ranked projects.

Lyon County	\$51,030.00	Boersma Rock Rifle Acquisition
Crawford County	\$11,430.00	Yellow Smoke Park Silt Retention Structure

District III Total \$62,460.00

District IV committee recommends funding the following four (4) ranked projects.

Ringgold County	\$9,338.00	Kokesh Park Pond Renovation
Madison County	\$12,987.00	Pammel Park Fisheries Habitat Project
Montgomery County	\$39,704.00	Pilot Grove Renewal Project – Phase II
Clark County	\$15,000.00	Vawn Wildlife Area Pond

District IV Total \$77,029.00

District V committee recommends funding the following two (2) projects.

Keokuk County	\$37,857.00	Sediment Basin
Lee County	\$39,510.00	Pond Shore Armoring

District V Total \$77,367.00

District VI committee recommends funding the following four (4) ranked projects.

Buchanan County	\$20,880.00	Cortright-Wapsi Fish Habitat Reconnections
Allamakee County	\$22,500.00	Phase 2-Harpers Slough Stream Bank Armoring
Jackson County	\$15,635.00	Stamp Memorial Park-Trout Pond Renovation
Linn County	\$26,797.50	Pinicon Ridge Park-Riverside Channels Fish Habitat Improvement

District VI Total \$85,812.50

The project described in the table below represents the unsuccessful grant applicants. It is provided for the Commission's information but is not recommended for funding at this time.

Kossuth County	\$45,000.00	Schuffham Land Acquisition
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The Department recommends the Commission to approve the aforementioned projects, as described above.

Moved – Commissioner Rettig

Seconded - Commissioner Drees

Discussion – Commissioner Rettig inquired about all of the applications being funded but one. Mike Mason, Interim Fisheries Bureau Chief responded that the one application not funded did not have the required 10% funding match. Commissioner Rettig stated that she believed there is a larger need for this grant and wondered if there was a problem with the ability to acquire the 10% funding match or if possibly individuals did not know the grant exists. Mike Mason stated that the grant availability and requirements are well publicized, he believes the reason there are not more applicants is the funding match requirement. Mimi Habhab, wildlife bureau stated that the number of applicants received were very typical, and that state county conservation boards are made aware of the grant availability. She also gave further detail of the history, rules and regulations, as well as scoring guidelines of the grant applications.

Motion – Carried by Unanimous Vote

14. Lake Delhi Lake Dredging and Related Improvements Grant

The Department requests Commission approval of a \$100,000 grant to the Lake Delhi Recreation Association for lake dredging and related improvements including ongoing dam maintenance and operation for Lake Delhi, Delaware County. The 2008 legislative session approved funding in Senate File 2432, the Rebuild Iowa Infrastructure Fund (RIIF), for this ongoing project.

Moved – Commissioner Drees

Seconded - Commissioner Francisco

Discussion – Commissioner Rettig asked if the grant was asked for by the department or if it had been a legislative earmark. Director Leopold responded that it was a legislative earmark but because it is over \$25k it also had to be approved by the commission. Commissioner Drees asked what kind of work was being done with watershed to avoid dredging. Mike McGhee responded that work had been done in the past but did not now meet standards and the project does not qualify as a lake restoration project.

Motion – Carried by Unanimous Vote

15. Lake Rathbun Section 1135 Corps of Engineers Habitat Restoration Project

The Department requests Commission approval of Phase III of the Lake Rathbun Section 1135 Habitat Restoration Project per our amended and approved 2001 Project Cooperation Agreement. Seven identified shoreline sites will be stabilized to reduce 5,000 tons of annual sediment delivery to the lake. These prioritized shoreline areas will not only improve water quality but help protect valuable fish spawning sites. DNR fisheries research and management staff identified and recommended these seven shoreline sites be stabilized. Federal Corps of Engineers funding totaling \$ 5.85 million dollars will be matched with \$ 540,000 of budgeted DNR Lake Restoration funds (\$274,000 FY09 and \$266,000 FY10). An additional \$ 150,000 of State MFT funding was allocated in May of 2006 for COE engineering and design needs. Lake Rathbun is currently being lowered four feet below conservation pool so this shoreline stabilization work can be initiated. Phase III approval also will allow Wetland Cell S-13 to be constructed. DNR engineering staff will complete final design and the COE will fund the estimated \$ 225,000 construction cost (DNR work-in-kind and land credits cover our project contribution).

Moved – Commissioner Francisco

Seconded - Commissioner Kircher

Discussion – Commissioner Francisco commented on the importance of projects of this nature. Commissioner Drees asked about retention. Mike McGhee responded this project is to stabilize seven identified shoreline sites to reduce 5,000 tons of annual sediment delivery to the lake. Michelle Wilson spoke about Rathbun water level and the continued cooperation with the Army Corps of Engineers to lower the lake level to accommodate not only projects like this but projects tied to Honey Creek State Park Resort.

Motion – Carried by Unanimous Vote

16. Donations

The Natural Resource Commission is requested to approve the following donations:

Donation to:	Amount	Description	Donation Provided by (Name/Org):
The Fish and Wildlife Trust Fund	\$25.00	the Department of Natural Resources as a memorial	West Burlington Firefighteres Association
Lacey-Keosauqua State Park	\$60.00	for the labor to weld the mower deck on the John Deere 3320	McQuoid Welding and Machining
Pleasant Creek State Recreation Area	\$100.00	of posts for the building of waterfowl nesting boxes	Wayne Anderson Iowa Duckmen and City of Cedar Rapids
Lacey-Keosauqua State Park	\$105.00	for the labor to repair two standing grills at cabins and the repair of the Ely Ford Mormon Crossing sign that was vandalized	McQuoid Welding and Machining
Brushy Creek State Recreation Area	\$1,125.00	for a bench and supplies in memory of the Royster family	Bill Royster
the Fish and Wildlife Trust Fund	\$2,500.00	in memory of E.A. Rector, an avid hunter and fisherman who valued Iowa's natural resources	E.A. Rector Estate c/o Mumma & Pederssen
Pikes Peak State Park	\$3,500.00	for a cargo truck box to keep valuable equipment secure, dry and rodent proof as well as your time and fuel for the delivery and placement of the box	Dale and Pat Demmer
Mines of Spain Recreation Area	\$3,597.23	of a SeeCoast TeleScope and installation supplies. This will complement the trail constructed in 2008	Maggie O'Connell Dubuque Audubon Society

Moved – Commissioner Drees Seconded - Commissioner Kircher Discussion – none Motion – Carried by Unanimous Vote
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17. Honey Creek Resort State Park Monthly Update

Michelle Wilson, Honey Creek State Park Resort project leader and Don Labate, Engineering Services Bureau Chief presented construction update information.

Moved – N/A - Informational Item Only

Seconded - N/A - Informational Item Only

Discussion –

- Commissioner Rettig questioned the mobility accessibility to all cabins, not just the handicap accessible cabins. She also asked if it was allowed to build facilities that are not accessible to all people. Don Labate explained that it was allowed to build facilities as long as there is a percentage that is handicap accessible just like the hotel rooms in the lodge. Michelle Wilson state that the building codes are subject to the review of the Department of Public Safety.
 - Commissioner Francisco asked if the security guard hired last fall was still on site. Michelle Wilson responded yes and they are trying to have the security guard do ‘rounds’ to the cabins.
 - Director Leopold stated that there are current discussions of potential of investment packages in the resort area.
 - Commissioner Drees asked about the landscaping that would be used at the cabins. Michelle Wilson responded that Angela Corio, Parks is responsible for the design as well as selecting the materials to be used, she did not have the most recent information but would gather to have at the next meeting in March.
 - Public comment on website review – cabin pricing not on HC website. Michelle Wilson to have site updated to reflect ‘retreat’ cabin vs. regular cabins.
 - Michelle Wilson and Deputy Director Pat Boddy will be meeting with Hansen Company and TSP on follow up of construction issues at the lodge and also to discuss the marina placement.
 - Commissioner Rettig inquired about the grand patio costs. She stated that the change orders are not reflected in budget information received. She also asked if the \$5.1M for construction of cabins split evenly between all of the cabins? Michelle Wilson responded that it is not broken out evenly as the cabins are different sizes. Michelle will provide cost breakdown per cabin at next NRC meeting. Commissioner Rettig also asked for updates of the 6 delayed projects:
 1. Playground – Already purchased and ready to install in spring ‘09
 2. Shelter House w/restroom (not currently in budget) – Currently only 1 day use shelter in budget but no restroom. Bill Duey with Army Corp of Engineers is also trying to acquire funding for additional shelters through stimulus funds.
 3. RV – Not budgeted
 4. Activities Shelter – Not budgeted, Michelle Wilson working with office of energy independence to discuss ‘green’ building funding mechanisms
 5. Beach -
 6. Golf Cart storage building – Not budgeted
- Wish List items:
- Bridge to Honey Creek State Park
 - Trail link to federal trail system around Lake Rathbun

18. General Discussion:

Election of Officers:

- Because this item was not on the agenda as a 'decision' item it will be postponed to the NRC March meeting.
- Legal Bureau Chief Ed Tormey and Attorney Kelley Myers clarified the rules of voting officer seats on the commission. Also explained the administrative rule that limits the time one may serve as the chair of the commission to one year per term.

Other Business:

- Commissioner Francisco offered congratulations to wildlife management for using native plantings.
- Commissioner Garst would like for information on public availability to take firewood out of state forest, state lands, or parks.
 - Commissioner Bird stated that there is a firewood permit to available to the public to take firewood from state lands.
 - Director Leopold stated that a permit may be approved if it fits with overall management goal of the area requested.
 - Paul Tauke returned and explained that it is not heavily promoted but firewood permits (\$10) are available. This would only be allowed in appropriate, designated areas only where trees have already marked or down.
 - Paul Tauke gave the example of number firewood permits at Stephens State Forest (approximately 25/yr.)
- Commissioner Garst would like to see at a future meeting a vote take place by the commission on Sustainable Funding.

Commissioner Rettig – Bike to work week is May 11th – May 15th she would like to see the DNR promote this day.

19. Items for Next Meeting

Next Meetings:

March 12, 2009 – Wright County

April 09, 2009 – Story County

Adjourn:

Moved – Commissioner Francisco

Seconded - Commissioner Kircher

Motion – Carried by Unanimous Vote